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INLAND MARINE INSURANCE

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RALPH H. BLANCHARD, EDITOR

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INLAND MARINE INSURANCE

An Interpretation of the Policies

BY

EARL APPLEMAN

Late Member of the New York Bar

FIRST EDITION
SEVENTH IMPRESSION

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PREFACE

There probably is no one more interested in the legal phases of his occupation than the man who is engaged in one phase or another of the insurance business. Whether representing insurer or assured, those whose work is in the field of marine insurance and its various branches are called on daily to enter into some new form of contract or to interpret some contract into which their principals have already entered. The necessities of their calling require that they become acquainted to some extent with the general law of contracts and with the leading cases of this highly specialized subject.

There are numerous textbooks on the law of marine insurance, but, so far as I am aware, there is none whatever dealing with that most recently developed phase of the subject, namely, inland marine or transportation insurance, which this book is designed to cover. It is not intended to provide an encyclopedia or even a comprehensive treatise on all the problems that confront insurers and insured. The intention is rather to consider and interpret *seriatim* the clauses to be found in the various policy forms now generally grouped under the head of inland marine insurance. In construing these clauses it has been necessary to rely principally on the decisions relating to similar stipulations in marine, fire, and casualty policies from which inland marine policies have been developed. For information with respect to the general law of insurance and those fundamental principles underlying all branches of the subject the reader is referred to such eminent authorities as Arnould,

Phillips, Joyce, May, Richards, Cooley, and numerous others.

Although this book is intended primarily for the use of insurance men, it is hoped that it will prove useful to members of the legal profession as an index to the authorities.

I acknowledge with thanks the assistance rendered by D. Roger Englar, Carl E. Heissner, W. D. Phillips, and F. B. Tuttle, all of whom have read the text and made helpful suggestions—Mr. Englar with respect to the treatment of legal questions, and Messrs. Heissner, Phillips, and Tuttle with respect to the practices of underwriters, brokers, and assured.

EARL APPLEMAN

NEW YORK, N. Y.,
June, 1934.

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INLAND MARINE INSURANCE

CHAPTER I

INTRODUCTION

1. Inland Marine Insurance Defined.

The term *inland marine insurance* is comparatively new to the insurance world. It was not used by Arnould or Phillips or Parsons or any of the older writers on marine insurance law. The expression might seem to mean insurance against the risks of navigation on lakes, rivers and canals. It is in this sense that Richards used it in 1909 when, in speaking of mixed sea and land risks, he said, "The policy is often made applicable to inland marine insurance, lake, river, or canal."[1] Twenty years later, however, these words had taken on a new significance and Winter in his book on *Marine Insurance* wrote:

> The development of new methods of transportation and the devising of new kinds of insurance which afford protection against practically all hazards, have given rise to policy forms which come within the scope of what is improperly, due to lack of a better name, known as *Inland* Marine insurance and which are, therefore, not within the purview of this treatise. These new types of insurance have made it necessary to amplify the meaning of marine insurance.[2]

As Winter points out, the term is misleading. It is a misnomer. The natural meaning attributed to it by Richards has been lost, and the words "inland marine

[1] Richards, *A Treatise On The Law of Insurance*, 3rd ed. p. 24, *n.* This statement is repeated in the fourth edition, p. 29, published in 1932.

[2] Winter, *Marine Insurance*, 2nd ed. p. 117.

insurance" now include a number of new forms of insurance, some of which have no marine features whatever. The principal characteristic of these new forms is that nearly all of them insure against the risks of actual or technical transportation though some of them are purely statutory and do not involve transportation at all.[1] The exact scope of the subject is not yet definitely determined but it may be better understood by a brief consideration of its origin, growth, and development.

2. An Outgrowth of Marine Insurance.

Inland marine insurance is a direct outgrowth of marine insurance which seems to have had its inception in the fears of early traders to entrust their ships and merchandise to the perils of ocean transportation. This form of indemnity developed over a period of several hundred years during which transportation by water was the principal means of carrying goods from one place to another. During most of that period, transportation by land was a negligible factor in commercial intercourse. Many of the principal cities were sea or river ports and hence accessible to ships. There were no railroads, and such quantities of goods as could be transported by pack train or caravan or stage coach, while sometimes insured, were too small to give rise to a separate system of insurance.[2] Thus transportation insurance for several hundred years was almost entirely marine,[3] and the policy which was developed to cover the risks of transportation covered against sea risks only.

[1] *Infra*, sec. 8.

[2] Modern researchers claim to have found some evidence of the existence of a primitive form of transportation insurance against land risks in the trading loan of the Babylonians and the Hindus.

[3] This was true even as late as the beginning of the nineteenth century. *Leon v. Casey*, 18 Asp. Mar. Cas. 300, 301 (1933), citing *Goldschmidt v. Marryat*, 1 Camp. 559 (1808).

In early times the owners of goods or their employes carried their shipments in small lots to the ship's side and handed them over the rail for the crew to stow. The consignees to whom the merchandise was shipped were presumably awaiting the arrival of the carrying vessel. The arrival of a ship at any port was an event of public interest, a matter presumed to be known by all the inhabitants of the place. The consignee was supposed to watch for the arrival of his goods, and it was his duty to receive them at the place at which they were deliverable.[1]

When business and commerce were in this stage of development there could not have been any great demand for protection other than that provided by insurance against perils of the seas, fires, jettisons, barratry of the master and mariners, etc., as provided in the ancient form. Indeed, it seems that as late as the year 1601 merchants obtained insurance only "when they make any great adventure (specially into remote parts)."[2] The habit of insuring, however, probably was not confined very long thereafter merely to "great adventures," and in due course became the customary practice of importers and exporters.

2*a*. *Marine Policy a Limited Coverage.*—Under the broad interpretation that was given to the policy terms, shippers and consignees were protected against most of the risks that could damage their goods while in transit, *i.e.*, while they were on board ship. But under the form of policy in general use which provided insurance "from the loading thereof," their goods were not protected until they were placed on board the ship.[3] The risk

[1] *The Boskenna Bay*, 40 Fed. 91 (1899); Carver, *Carriage of Goods by Sea*, 7th ed. sec. 465 and cases cited there.

[2] 43 *Elizabeth*, ch. 12.

[3] Arnould, *On Marine Insurance and Average*, 11th ed. sec. 447; *Hicks v. Merchants Ins. Co.*, 1 Ohio Dec. 374 (1851); *Cottam v. Mechanics' Ins.*

continued only until the goods were "safely landed," which meant delivered on shore at a customary landing place.[1] Lighterage risks at port of destination were covered only if lightering was the customary method of landing cargoes at that port,[2] or if the assured obtained a special craft clause extending the insurance coverage to lighterage from ship to shore.

2*b*. *Broader Clauses Added.*—Neither the ocean policy nor the craft clause covered the goods while on the wharf. If the owner wished to insure against fire or other similar risks on the wharf, he was required to seek additional insurance. As this was not always convenient, cargo owners began to demand an extension of the coverage for a short time after landing. Numerous controversies arose as to whether this additional coverage expired on each piece of cargo after the agreed time had expired or only when that time had elapsed after the entire cargo was landed.[3] These controversies and the inconvenience of obtaining additional insurance led to a demand for a definite coverage of the goods wherever they might be while in transit between the premises of the buyer and the premises of the seller, regardless of the form of conveyance used.

For many years cautious underwriters were unwilling to grant this additional coverage, except in the more settled countries such as England, France and Germany

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Co., 40 La. An. 259, 4 So. 510 (1888); *Smith v. Mobile Ins. Co.*, 30 Ala. (N.S.) 167 (1857). For exception to the rule see *Coggeshall v. American Ins. Co.*, 3 Wend. (N.Y.) 283 (1829).

[1] *Gracie v. Marine Ins. Co.*, 8 Cranch 75 (1814); *Mobile Ins. Co. v. McMillan*, 31 Ala. 711 (1858).

[2] Phillips, *A Treatise on the Law of Insurance*, 5th ed. sec. 970; *Hurry v. Royal Assurance Co.*, 2 Bos. & P. 430 (1801); *Coggeshall v. American Ins. Co.*, 3 Wend. (N.Y.) 283 (1829).

[3] *Gardiner v. Smith*, 1 Johns. Cas. (N.Y.) 141 (1799); *Fletcher v. Marine Ins. Co.*, 18 Mo. 193; *Mansur v. New Eng. Ins. Co.*, 12 Gray (Mass.) 520 (1859).

or under a special policy arranged for the occasion;[1] but later it became the common practice to cover goods on inland conveyances anywhere. From this practice there developed the "warehouse to warehouse" clause. This clause provides in various forms that the goods are insured from the time the merchandise leaves the store or warehouse of the shipper and continuously thereafter in due course of transit until safely delivered in the store or warehouse of the consignee at final place of destination. The clause was engrafted on the ocean cargo policy and is an instance of inland marine insurance as it is known today.[2]

3. Still Broader Coverage Demanded.

In recent years there arose a demand for a further broadening of the coverage. This demand resulted in underwriters granting insurance not only against ocean risks but against the risks of land transportation as well, and finally developed the all risks endorsement. Such was the situation at the outbreak of the World War, and it is quite possible that the marine policy would have stopped with the warehouse to warehouse clause and the all risks endorsement except for three things: the World War, the growth of new methods of transportation,

[1] See *Boehm v. Combe*, 2 M. & S. 172 (1813), where bullion was insured by land from London to Harwich and by sea to Gottenburgh; *Jacob v. Gaviller*, 7 Com. Cas. 116 (1902), where a prize fox terrier was insured from Mersey to Bombay and thence by rail to Lahore; *Hyderabad v. Willoughby*, L.R. 2 Q.B. 530 (1899), where gold was insured from the mine in India 40 miles to railway, thence by rail to Bombay and by steamer to London.

[2] The warehouse to warehouse clause is now to be found in special import and export riders attached to the ocean policy and in the Institute Cargo Clauses. By the year 1900 the clause had become one of the usual conditions of Lloyd's policies. *Ide v. Chalmers*, 5 Com. Cas. 212 (1900).

especially the automobile truck, and the increase and diffusion of wealth.

4. Effect of World War.

Prior to the World War the principal means of transporting goods by land in this and in other countries was the railroad. The railroads, while somewhat unstable in their early beginnings, had developed into the wealthiest and perhaps the most permanent of our business institutions. Their wealth was enormous, their agents were legion, and there was a railroad station in nearly every community. The railroad, unlike the steamship, which is in port one day and may be gone forever the next, was easily made the object of judicial process. Being always available for the commencement of legal proceedings and having for the most part ample resources with which to respond in damages, the railroads became more conscious of their responsibilities than the steamship companies, and in the majority of cases proper claims against the railroads for loss of goods or damage to them were met within a reasonable time. Furthermore, the risks of rail transportation were not so great as those of ocean carriage, the values involved were not so large, and the law governing the railroads was stricter than that governing ocean carriers. For these reasons there was less need for shippers to obtain insurance on goods carried by rail, and the practice of doing so never became general.

This condition, however, was changed somewhat by the advent of the World War. That national emergency brought with it the requisition not only of steamships and factories and shipyards but of the railroads as well. The Government was thus thrust into business more or less against its will and forced to operate an enormous transportation system. While it used much of the

trained personnel of the railroads, it was not in a position to meet promptly the demand of shippers for the payment of claims for lost and damaged goods, and, owing probably to necessary governmental red tape, was unable to do so. No doubt the Government did its best, but that was not enough to satisfy shippers who demanded prompt payment of their losses. And values increased.

The result was that shippers soon came to prefer paying insurance premiums in order to get prompt payment of their losses, allowing their underwriters to fight out a long battle with the government for reimbursement in case a loss gave rise to a valid claim against the railroad. The habit thus developed during the war became fixed; and after the railroads were returned to their owners, shippers, having found the services of insurers to their liking, did not return to their old ways.

5. Effect of Automobile and Airplane.

Concurrently with this change in the habits of merchants and shippers, the automobile, which had theretofore been used principally as a pleasure vehicle or for the carrying of goods within a small radius, became a carrier of national importance, competing with the railroads. It had the advantage of being able to give door-to-door service and was in many instances more speedy than the railroad. Chain stores became large users of such transportation. However, while shippers liked the advantages afforded by the automobile trucking companies, they soon found that when goods were lost or damaged payment was not forthcoming with promptness and sometimes not at all. For in many instances the truck owners were individuals of little responsibility, persons unable, even if they were willing, to respond in damages to the extent of the shipper's loss. The shipper,

therefore, was forced as a matter of self protection to insure his goods against the risks of transportation if he was to use the service offered by automobile trucks.

While the automobile was becoming a vehicle of national importance in the country's transportation business, the airplane was also becoming a carrier of goods as well as a carrier of mail and passengers. Although not yet a rival of the railroad or the automobile, the airplane is growing daily in importance as a carrier of goods. Such goods require insurance—transportation insurance.[1]

6. Effect of Increased Wealth.

Still another factor contributing to the growth of transportation insurance was the enormous growth and wide diffusion of personal fortunes, which created a demand for increased insurance on personal property of a portable nature. Although the owner of valuable household goods could insure them against fire under the standard form of fire policy, and could protect himself by casualty insurance from loss by burglary while the goods were within his residence, such insurance failed to cover (except against robbery) jewelry or furs worn on the person outside the home. It also failed to cover the clothes and baggage and other valuable property carried by travelers, the samples carried by traveling salesmen, the films of moving pictures, musical instruments, or theatrical property while in course of transit.

All these developments have created demands for transportation insurance wholly unconnected with the carriage of goods by water.

[1] For an excellent account of aviation insurance see an article on that subject by Walter C. Crowdus in *The Journal of Air Law* for April, 1931, Vol. II, p. 176.

7. Development of Inland Marine Insurance by Marine Insurers.

The question may be asked at this point why the inland marine business came to the marine underwriters instead of to the fire or casualty underwriters since most of it is not marine business at all. The answer is two-fold. In the first place the marine companies were the only ones with an extensive experience in dealing with the risks of transportation. For centuries they had been accumulating experience in insuring against the hazards involved in carrying goods. Of course the risks of land transportation were not identical with those of the sea but they were more similar to sea perils than to the hazards covered by fire and casualty companies. The marine companies, therefore, were especially fitted to write the business. Transportation insurance was their special forte.

A further reason for the drift of the transportation business to the marine companies was that their charters permitted them to write it. The fire insurance companies were at first permitted by their charters to write fire insurance only, though later the law permitted them to cover also sprinkler leakage, windstorm, and similar risks; and now in some states they are permitted to insure against the same risks as marine insurance companies.[1] Casualty insurance companies also, though their powers have been much broadened,[2] originally were limited by their charters to a very narrow field. The marine companies on the other hand were permitted to cover all the risks of transportation and were not hampered by legal restrictions as to rates and forms of policies.

[1] See sec. 110 of the New York Insurance Law.

[2] See sec. 70 of the New York Insurance Law.

8. Scope Broadened by Statute.

The transportation business was, therefore, developed by the marine companies; and in many states the scope of marine insurance was broadened by statute. It is now defined in Section 150 of the New York Insurance Law as follows:

1. The terms "marine insurance" and "marine business" and "marine risks" shall mean insurance or reinsurance against any and all kinds of loss of or damage to:

(*a*) Vessels, craft, aircraft, cars, automobiles and vehicles of every kind (excluding automobiles operating under their own power or while in storage not incidental to transportation), as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks, and

(*b*) Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds); but, except as herein specified, shall not mean insurances against loss by reason of bodily injury to the person, and

(*c*) Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transport or otherwise.[1]

[1] Subsections (*a*) and (*b*) were enacted by amendment in the Laws of 1923, ch. 437. Subsection (*c*) was added by Laws of 1925, ch. 203. The reference to inland marine insurance in sec. (*b*) appeared first in the amendment of 1921, Laws of 1921, ch. 236. By sec. 110 of the New York Insurance Law fire insurance companies may now insure against all the risks specified in sec. 150 which is quoted above. By sec. 70

9. Overlapping Coverages.

Despite the breadth of operations thus permitted by modern statutes, conflicts arose among the fire, casualty, and marine companies as to the scope of their respective businesses. Complaints were made by the fire companies and the casualty companies that the marine companies were invading their fields of business. Numerous organizations of underwriters sought to define the line of demarcation between the insurance that might be written by the fire companies, the marine companies, and the casualty companies. Chief among these organizations were the Interstate Underwriters Board representing the fire underwriters, the Casualty Committee, an organization of casualty underwriters, the Marine-Casualty Committee and the Inland Marine Underwriters Association representing the marine underwriters. Joint committees composed of members of these various organizations succeeded in eliminating some of the friction that existed by defining what should be considered marine and inland marine business on the one hand and what should be considered as belonging to the fire and casualty companies on the other.

Attempts were made to reach an agreement; but none of the rules promulgated by these various organizations had the force of law, and the views of the three classes of underwriters were too divergent to permit of any general agreement. The Superintendent of Insurance of New York, after extended hearings, published a ruling by which he defined in detail the business which marine insurance companies would be permitted to write. This ruling was accepted with some modifications by the National Convention of Insurance Commissioners in

casualty insurance companies are permitted to amend their charters so as to enable them to issue jewelers block policies. See *infra*, sec. 77 *et seq.*

June, 1933, as a correct definition of marine insurance. In the modified form, it has since been accepted as such by an inter-company agreement signed by the principal underwriters of inland marine insurance.[1] Many states also have adopted the definition and made it effective within their borders.

10. Summary.

Thus inland marine insurance, which at first meant merely insurance against the ordinary risks connected with transportation on rivers, lakes, and canals, has developed into insurance against practically all risks connected with transportation other than carriage by sea; and in some instances may include carriage by sea. By gradual stages it has come to include not only the risks of transit by land and by air but is deemed to cover goods and merchandise while being prepared for shipment and while awaiting shipment. It includes also insurance on certain classes of property beyond these limits as well as insurance against certain forms of legal liability. This growth in the meaning of inland marine insurance has been brought about by the demands of shippers for a broader coverage, by the conditions produced by the World War, by the invention of new methods of transportation, and by the increase and diffusion of wealth.

Starting with additions to the old marine policy, inland marine insurance has developed and is developing a whole new set of policies of its own. These contracts fall into four main classes: (1) transportation policies, (2) the floater policies, policies covering goods which fluctuate in location and amount, (3) bailee and legal liability policies, and (4) certain special policies which cannot well be classified. These various forms of insurance contracts will be discussed in the succeeding chapters.

[1] See Appendix A for the text of the agreement.

CHAPTER II

TRANSPORTATION POLICIES

11. Origin and Form.

The principal characteristic of inland marine insurance is that it provides insurance against the risks of transportation. This was the characteristic that made it possible for the marine insurance companies, already familiar with transportation risks, to originate and develop the business. As the ocean policy was only partially adapted to land transportation, a part only of its terms was retained in the transportation policies. Other terms were altered or eliminated altogether. New clauses were invented; and some clauses in use by the fire and casualty companies were adopted, with appropriate alterations, while others were taken almost bodily and put into the transportation policies. Thus it has come about that transportation policies while essentially marine in nature are in reality a combination of marine, fire, and casualty policies.

Transportation policies cover goods, wares, and merchandise while in the custody of railroads, express companies, public truckmen, coastwise steamers, and other carriers. Special forms have been devised to cover shipments by registered mail and by parcel post and also to cover special commodities. The common feature, however, of all such policies is that they insure portable property while it is in transit. The most important policies of this group and those first to be considered are written on a time basis. They are called *transportation policies* or *transit policies.*[1]

[1] See Appendix B for typical form.

These policies usually begin with certain statements as to the parties, the amount of insurance for which the policy is issued, the rate of premium, the term of the policy, and the nature of the property insured. As a rule the name of the insurer appears at the top of the policy in large letters. Below are spaces in which the amount of insurance, the rate of premium and the amount of the premium may be inserted for easy reference. The contract then may continue somewhat as follows:

IN CONSIDERATION OF THE STIPULATIONS HEREIN NAMED

and of.....Dollars, Premium,
does insure.....John Doe.....
for the term of.....from the....day of.....1932,
to the.....day of.....1933.

12. The Premium.

The premium is the consideration for which the policy is issued, and unless there is some agreement between the parties as to time of payment, it is due when the policy is delivered. The delivery of the policy and the payment of the premium are said to be reciprocal or concurrent considerations,[1] and the acceptance and retention of the policy implies a promise to pay the premium.[2] However, while the insurer is not under any obligation to deliver the policy without payment of the premium, nonpayment of the premium is no defence to a suit for a loss.[3]

In many transportation policies the agreement with respect to the premium is as follows:

[1] *Iowa Life Ins. Co. v. Lewis*, 187 U.S. 335, 23 Sup. Ct. Rep. 126, 47 L. ed. 204 (1902); *Babcock v. Baker*, 37 A.D. 558, 56 N.Y. Supp. 239, (1899).

[2] *Westchester Fire Ins. Co. v. Gurian*, 115 A.D. 610, 101 N.Y. Supp. 50, (1906).

[3] *Healey v. Ins. Co. of Penna.*, 50 A.D. 327, 63 N.Y. Supp. 1055 (1900); *McLean v. Tobin* 109 N.Y. Supp. 926, 58 Misc. 528 (1908).

The premium charged under this policy is based on an estimate of $..... worth of shipments made during the period insured, and the Assured warrants that at the end of ..... will report to this Company the actual value of all shipments covered hereunder during the period for which such report is required, and upon the total of all reported shipments exceeding in the aggregate the said estimate of $....., the Assured agrees to pay this Company additional premium at the rate of .... per $100 of value in excess of said estimate of $....., such additional premium to become due and payable to this Company immediately upon the furnishing of the aforesaid report or reports; but in the event of the actual shipments falling short of the said estimate of $....., then this Company will return premium at the same rate on the deficiency, but no return premium shall become due or payable until the expiration of this policy; it being understood that by the acceptance of this readjustment clause, the reinstatement clause in the body of this policy is waived.

The time for making reports may be stipulated to suit the convenience of the parties. Sometimes it is agreed that the reports and payment of premiums will be made monthly. At other times it is agreed that a report is to be made at the end of the insured period, usually one year. As the premium under this clause is based on the value of the assured's shipments, the sum inserted at the beginning of the policy is merely the estimated amount that will be earned under the policy, and is subject to readjustment at the end of the insured period. If this clause is used, the reinstatement clause discussed hereafter[1] is waived. Occasionally, though not often, the policy is written for a flat premium based on the previous year's shipments.

In all cases the premium becomes due and payable in the amount and at the time agreed or, in the absence of agreement, when the information required to fix the amount becomes known.[2] If a definite premium is

[1] See *infra*, sec. 53.

[2] *Orient Mutual Ins. Co. v. Wright*, 23 How. 401, 407, 16 L. ed. 524 (1859).

not agreed on and no means of calculating it is provided in the policy, the usual or customary rate will be implied.[1]

13. Term of the Policy.

It is important, of course, that the exact time when the term begins and ends should be clearly stated. If the policy provides merely that the term shall begin or end on a specified day, it is understood that that day begins and ends at midnight.[2] In most term policies, however, the term is described as commencing at noon of a certain day. In the absence of statute, custom, or evidence that a different time was intended, "noon" has been held to mean solar time and not standard time.[3] The place at which the time is to be reckoned is the place where the policy is made.[4] Controversies with respect to these matters are avoided by using the words, "at noon, Standard time, at place of issuance," and these words are now found in many policies.

14. Description of Property Insured.

The policy then proceeds to describe the property insured. The following clause is often used:

[1] *Smith & Wallace Co. v. Prussian Ins. Co.*, 68 N.J.L. 674, 54 Atl. 458 (1903); *Nord Deutsche Ins. Co. v. Hart*, 230 Fed. 809 (1916); *Jacobs v. Atlas Ins. Co.*, 148 Ill. App. 325 (1909).

[2] That is, the term begins at midnight on the day from which it runs and ends at midnight of the day on which the term ends. *Jones v. German Ins. Co.*, 110 Iowa 75, 81 N.W. 188 (1899); Gen. Const. L. (N.Y.) sec. 20.

[3] *Searles v. Averhoff*, 28 Neb. 668, 44 N.W. 872 (1890); *Parker v. The State*, 35 Tex. Cr. Rep. 12 (1895); *Meier v. Phoenix Ins. Co.*, 12 Ins. L.J. (N.S.) 192. In New York "noon" means 12 o'clock standard time. *Gen. Const. L. sec. 53*; *Globe & Rutgers Co. v. Moffat*, 154 Fed. 13 (1907). In New Jersey "noon" does not mean daylight saving time but standard time. 4 Comp. Stat. 4879; *Carroll v. Bayonne*, 99 N.J.L. 493, 124 Atl. 613 (1924). See also *Rochester German Ins. Co. v. Peaslee-Gaulbert Co.*, 120 Ky. 752, 89 S.W. 3 (1905), where "noon" was shown by custom to mean 12 o'clock standard time and not sun time.

[4] *Walker v. Protection Ins. Co.*, 29 Me. 317 (1849).

On goods and merchandise, including packages, consisting of.....
.....
their own or held by them in trust, or on commission, or on consignment, or on which they have made advances, or sold but not delivered.

In the blank space provided, a description of the insured property is inserted. It is important that the description be correct. Otherwise the insurer may avoid liability in case of a loss on the ground that the property lost or damaged was not the property insured. The property may be groceries or dry goods or cigarettes or chocolate candies, or all these articles, but whatever it is the words describing the commodity should be broad enough to cover the goods intended to be insured and so clear as to avoid ambiguity.

For example, it has been held that "machinery used" is not "machinery kept for sale";[1] that "woolen goods" are not silk goods;[2] that "groceries" do not include pails and shovels even though the groceries referred to were kept in a country store;[3] that a "Willys-Knight" automobile is not a Willys-Overland car;[4] that a policy covering laces, trimmings, and embroideries, including samples and supplies does not cover benzine kept to dye laces in violation of the policy terms;[5] that a policy on "fruits and vegetables . . . and all other merchandise" does not cover ice cream;[6] and that "household goods" do not include horse blankets when not in the house although they are used as bed blankets in the winter.[7]

[1] *Michel v. American Ins. Co.*, 17 A.D. 97, 44 N.Y. Supp. 832 (1897).
[2] *Aetna Casualty Co. v. Gerber*, 140 Md. 441, 117 Atl. 856 (1922).
[3] *Fletcher v. Bowers*, 131 Mass. 333 (1881).
[4] *Affleck v. Potomac Ins. Co.*, 49 R.I. 112, 140 Atl. 469, 50 R.I. 405, 148 Atl. 324 (1928).
[5] *Ertischek v. New Hampshire Ins. Co.*, 179 A.D. 827, 167 N.Y. Supp. 58 (1917).
[6] *Emery v. American Ins. Co.*, 177 Iowa 4, 158 N.W. 748 (1916).
[7] *McManus v. Home Ins. Co.*, 201 Wis. 164, 229 N.W. 537 (1930).

On the other hand, a policy on grain has been held to cover bran;[1] a policy on automobile accessories includes batteries;[2] a stock of "watches, watch trimmings, etc.," includes silverware, clocks and jewelry;[3] "stock in trade" of a furniture dealer includes his paints and varnishes;[4] a policy on a stock of soft drinks, candies, cigars, and all other articles usual to assured's line of business covers pool tables, chairs, cash registers, etc., when shown to be usually a part of the equipment of such establishments;[5] a policy on personal effects includes a set of false teeth while they are in the owner's desk;[6] and a mistake in stating the number of an automobile engine will not preclude recovery under a policy in which the automobile is otherwise properly described.[7]

An erroneous description is not always fatal. In case of fraud or mutual mistake the policy may be reformed so as to express the actual agreement of the parties.[8] However, proof of fraud or mutual mistake is often difficult to obtain, and it should be remembered that in the absence of such proof the contract will stand as written.

15. Goods Held in Trust.

The transportation policy, like the fire policies used to insure warehousemen, commission merchants and other

[1] *German Fire Ins. Co. v. Walker* 146 S.W. 606 (1912).

[2] *Intermountain Assn. v. Milwaukee Ins. Co.*, 44 Idaho 491, 258 Pac. 362 (1927).

[3] *Crosby v. Franklin Fire Ins. Co.*, 5 Gray (Mass.) 504 (1855).

[4] *Haley v. Dorchester Fire Ins. Co.*, 12 Gray (Mass.) 545 (1859).

[5] *Martino v. Phoenix Ins. Co.*, 9 La. App. 337, 120 So. 511 (1928).

[6] *Ettlinger v. Importers' and Exporters' Ins. Co.*, 247 N.Y. Supp. 260, 138 Misc. 743 (1931).

[7] *Tomato Products Co. v. Mnfr's. Liability Ins. Co.*, 203 A.D. 678, 197 N.Y. Supp. 497 (1922).

[8] *Maher v. Hibernia Ins. Co.*, 67 N.Y. 283 (1876); *Hearne v. New Eng. Ins. Co.*, 20 Wall. 488, 22 L. ed. 395 (1874); *Carson v. Home Ins. Co.*, 39 Fed. (2nd) 50 (1930); *Berry v. Cont. Life Ins. Co.*, 33 S.W. (2nd) 1016 (1931).

bailees, covers not only the goods actually owned by the assured but also goods held by him in trust or on commission, or on consignment or on which he has made advances or sold but not delivered. These words have been taken from the fire policies in which they have been inserted for many years as a modification of the warranty of absolute ownership. The words, "held in trust," as used in an insurance policy, are not to be interpreted in a technical legal sense but in a mercantile sense. In *Home Insurance Co. v. Baltimore Warehouse Co.*,[1] where a warehouseman was held to be such a trustee, the United States Supreme Court said:

> The words "merchandise held in trust" aptly describe the property of the depositors. The warehouse company held merchandise in trust for their customers, not, it is true, as technical trustees, but as trustees in the sense that the goods had been entrusted to them. They were not empowered by their charter to hold property under technical trusts cognizable only in equity. Hence, when they sought insurance of merchandise held by them in trust, it must have been intended of such as they held in trust—in a mercantile sense, goods entrusted to them by the legal owners. That such is the meaning of the words as used in this policy we cannot doubt.[2]

It has been held that a selling agent[3] or a cotton compressor engaged in compressing cotton belonging to others,[4] or a commission merchant who has sold but not delivered the goods,[5] or who has not yet sold them,[6] or a merchant entrusted with a stock of goods by

[1] 93 U.S. 527, 23 L. ed. 868 (1876).

[2] See also *Czerweny v. Nat. Fire Ins. Co.*, 139 N.Y. Supp. 345 (1913); *Hough v. Peoples Ins. Co.*, 36 Md. 398 (1872); and *Stillwell v. Staples*, 19 N.Y. 401 (1859).

[3] *Roberts v. Firemen's Ins. Co.*, 165 Pa. St. Rep. 55 (1894).

[4] *Calif. Ins. Co. v. Union Compress Co.*, 133 U.S. 387, 10 Sup. Ct. Rep. 365, 33 L. ed. 730 (1899).

[5] *Warring v. Ins. Co.*, 45 N.Y. 606 (1871). See also Phillips *On Insurance*, 5th ed. sec. 490.

[6] *DeForest v. Fulton Ins. Co.*, 1 Hall (N.Y.) 84 (1828).

the real owner;[1] or a carpet company engaged in repairing carpets for others[2] is such a trustee as is contemplated in a policy covering goods "held in trust." Indeed the clause seems to cover all cases of bailments.[3]

On commission and on consignment are merely special forms of holding goods in trust, the former describing the position of a factor or agent and the latter that of a factor or agent or conditional purchaser. In all such cases the assured may collect the insurance as trustee for the real owner,[1] and under the New York decisions if the assured refuses to do so the bailor himself may sue the insurer.[5]

16. Payment of Loss.

The next provision in the policy under consideration provides for payment in case of loss.[6] The clause generally is, "*Loss, if any, payable to assured or order.*" If other parties than the assured are interested in the property, such as mortgagees or vendors under a conditional contract of sale, the loss may be made payable to both parties conjunctively or in the alternative or "as their interests may appear." In the first case the clause

[1] *Ferguson v. Pekin Plow Co.*, 141 Mo. 161, 42 S.W. 711 (1897).

[2] *Beidelman v. Powell*, 10 Mo. App. 280 (1881).

[3] *Exton v. Home Fire Ins. Co.*, 249 N.Y. 258, 164 N.E. 43 (1928), affg. 222 A.D. 237, 225 N.Y. Supp. 714. A bailor is one who entrusts his property to another, who is called a bailee. This relationship is referred to as a bailment.

[4] *Calif. Ins. Co. v. Union Compress Co.*, 133 U.S. 387; 10 Sup. Ct. Rep. 365; 33 L. ed. 730 (1890); *Roberts v. Firemen's Ins. Co.*, 165 Pa. St. Rep. 55, 30 Atl. 450 (1894); *Polley v. Daniels*, 238 A.D. 181, 264 N.Y. Supp. 194 (1933).

[5] *Exton v. Home Fire Ins. Co., supra; Utica Canning Co. v. Home Ins. Co.*, 132 A.D. 420, 116 N.Y. Supp. 934 (1909).

[6] The clauses and the order in which they are arranged vary slightly in the forms of the various companies. For the purposes of this work a typical policy has been selected.

would be, "Loss, if any, payable to John Doe and Richard Roe." If it be agreed that either may collect the insurance, the expression would be, "Loss, if any, payable to John Doe or Richard Roe." If the interests of the parties at the time a loss occurs may be uncertain, the policy may provide for payment "as their interests may appear."

If the loss is made payable simply to the assured or order, payment should ordinarily be made to the assured or to such parties as he may designate. If the loss is made payable to two or more named parties, payment should be made exactly as provided in the policy; and if the words, "as their interests may appear," are added, strict proofs of the respective interests of the assured may be required. Generally speaking, the insurer need not concern himself with lienors[1] or mortgagees[2] unless they are named in the policy or there be an agreement by the owner or mortgagor to insure for the benefit of the lienor or mortgagee. In that event the lienor or mortgagee is entitled to the insurance.[3] However, where he claims the insurance solely by reason of an agreement with the owner or mortgagor the lienor or mortgagee must notify the insurer and produce proofs of his right to be paid.

17. "Valued At."[4]

The valuation clause usually begins with the words, "*The said goods and merchandise shall be valued at.*" Then there is inserted some agreement with reference

[1] *Rackley v. Scott*, 61 N.H. 140 (1881).

[2] *Carpenter v. Ins. Co.*, 16 Pet. 495, 10 L. ed. 1044 (1842).

[3] *Cromwell v. Brooklyn Ins. Co.*, 44 N.Y. 42 (1870). But see *Sleeper v. Union Ins. Co.*, 65 Me. 385 (1876), where a contrary result was reached on slightly different facts.

[4] As to the importance of using these particular words see *Lee v. Hamilton Ins. Co.*, 251 N.Y. 230, 167 N.E. 426 (1929), and *Wallace v. Insurance Co.*, 4 La. 289 (1832).

to value. It may be agreed that the property is worth so many dollars, or that it is valued at invoice cost, or invoice cost plus . . . per cent, or at actual cash value on date of shipment or at destination, or at actual replacement value at time of disaster. The value may be agreed on in some other way or may be omitted altogether. Expressions regarding value are of importance because they determine whether the policy is a *valued* or an *unvalued* (or *open*) policy.[1] If it be a valued policy the insurer in case of a loss is bound to pay the value agreed on, but if it be an unvalued policy the assured must prove the extent of his loss before he can recover.[2] Of course, if the agreement with respect to value be procured by fraud or misrepresentation of a material fact intentionally made, the contract may be avoided.[3]

The general rule is that where the parties agree to a definite value expressed in the policy, it is a valued policy; and where the value is not expressed in the policy, it is an unvalued policy.[4] This rule is simple enough in application where the value of the property is definitely expressed in dollars and cents or where statements of value are omitted altogether; but where the parties undertake to state the value in other terms, difficulties

[1] The courts use these last two terms as synonyms. Among marine insurers an open policy is one that runs continuously without definite term until cancelled. In this work "unvalued" will be used to indicate the opposite of "valued," and "open" will be used in the sense in which it is used by marine insurers.

[2] Arnould, 11th ed. sec. 339; *Michael v. Prussian Ins. Co.*, 171 N.Y. 25, 63 N.E. 810 (1902).

[3] *Sturm v. Williams*, 38 N.Y. Super. Ct. 325 (1874); *Delaware Ins. Co. v. Hill*, 127 S.W. (Tex.) 283 (1910); *The Greyhound, King v. Aetna Ins. Co.*, 54 Fed. (2nd) 253, 1931 A.M.C. 1940.

[4] Arnould, 11th ed. sec. 341; 38 C.J. 1123–1125; *The Livingstone*, 130 Fed. 746 (1904); *The St. Johns*, 101 Fed. 469 (1900); *Williams v. Cont. Ins. Co.*, 24 Fed. 767 (1885). A mere statement of the amount of insurance does not make the policy valued. *St. Paul Ins. Co. v. Pure Oil Co.*, 63 Fed. (2nd) 771, 1933 A.M.C. 502.

sometimes arise. For example, where a grain dealer procured insurance "in the sum of $8,000 on 17,000 bushels of wheat," the United States District Court for the District of Minnesota held that the insurance was on an unvalued policy,[1] but where "380 kegs of manufactured tobacco, worth 9600 dollars," all of the same kind and quality, were insured by a fire policy, an early New York decision held the policy to be valued and said that the assured was entitled to recover pro rata for a total loss of part of the kegs.[2]

The question whether a particular policy is unvalued or valued is often difficult to determine when the policy refers to some other instrument. In one such case a steamship company insured the freight on a cargo of lumber under a policy which provided, "valued at actual freight." The court held that as the amount of freight was ascertainable from the bills of lading, the policy was a valued one even though at the time the policy was issued the cargo had not been loaded and the amount of freight was unknown. The reason given for reaching this conclusion was that "the factors upon which the amount depended were all settled and fixed by the contract." "The value," said the court, "was not left to be ascertained in case of loss as it would have been if it had been an open [unvalued] policy."[3] A similar conclusion was reached in Massachusetts under a differ-

[1] *Williams v. Cont. Ins. Co.*, 24 Fed. 767 (1885). The New York Court of Appeals held a policy to be open where in the clause, "valued at ——— as endorsed," the blank space was left unfilled and the endorsement merely stated the amount of insurance agreed on but not the value of the insured property, *Snowden v. Guion*, 101 N.Y. 458, 5 N.E. 322 (1886). Where under an unvalued policy a valued certificate was issued the certificate was held to control. *St. Paul Ins. Co. v. Pure Oil Co.*, 58 Fed. (2nd) 393, 1932 A.M.C. 432, rev. 63 Fed. (2nd) 771, 1932 A.M.C. 502.

[2] *Harris v. Eagle Fire Co.*, 5 Johns. (N.Y.) 368 (1810).

[3] *Victoria S.S. Co. v. Western Assurance Co.*, 167 Calif. 348, 139 Pac. 807 (1914)

ent state of facts.[1] In the Massachusetts case the policy provided that the insured goods "are valued (premium included) as per form attached." The form attached to the policy contained the following words:

> Valued, premium included, $5.50 to the £ sterling and if invoiced in American Gold at invoice and 10 per cent.

The court held that the contract was in form a valued policy, and laid down the rule that a policy may be a valued policy though by agreement the value is to be fixed by reference to some other document, provided the agreement is based on some standard certain or capable of being made certain and known to and accepted by both parties.

In such cases the line of distinction between valued and unvalued policies is a close one. If the parties wish the policy to be valued they should state the value in dollars and cents or agree on some definite standard by which the value may be readily calculated. Otherwise there is a strong probability that the policy will be held to be unvalued.[2]

18. Limit of Liability.

Following the valuation clause the transportation policy generally provides a limit to the insurer's liability in these words:

> but this company shall not be liable for more than . . . . . dollars in any one casualty, either in case of partial or total loss, or salvage charges, or any other charges, or expenses, or all combined.

This clause fixes the insurer's maximum liability for any one casualty, and is an important element in calculating the rate. It is similar to the clause now appearing in the

[1] *Ins. Co. of North America v. Willey*, 212 Mass. 75, 98 N.E. 677 (1912).

[2] For a recent English case touching on this general subject see *Loders v. Bank of New Zealand*, 33 Lloyd's List 70 (1929).

Inland Vessel Hull Form which was drawn to avoid the double or triple liability inherent in some hull forms.

19. "In Transit at and from."

The words "in transit at and from" which are part of the printed form are generally followed by words describing the physical limits covered by the policy. A common form is, "In transit at and from points and/or places in the United States to points and/or places in the United States." Of course the policy may be extended to cover world-wide limits or it may be restricted to a much narrower range. The words "at and from" are taken from the marine policy. It is said that when the word "from" is used alone it means that the coverage does not begin until the ship starts on the voyage but that if "at and from" are used the goods are covered for the port risk also.[1] Likewise if a ship is insured at and from a certain port the risk attaches as soon as the vessel arrives safely at the port named or begins at once if she is there when the policy is issued.[2]

"In transit" means literally in course of passing from one point to another,[3] while "at" indicates location

[1] That is, from the time of loading until the ship actually sails.

[2] Richards, 4th ed. p. 766, Winter, 2nd ed. p. 140.

[3] *Amory Mfg. Co. v. Gulf Ry. Co.*, 89 Tex. 419, 37 S.W. 856 (1896), holding that cotton was not in transit while on a platform awaiting shipment. See also *Gulf Ry. Co. v. Pepperell Mfg. Co.*, 37 S.W. 965 (1896). In *Royal Ins. Co. v. Texas Ry.*, 53 Tex. Civ. App. 154, 115 S.W. 117 (1908), it was held that cotton placed in a railway car for shipment was not yet in transit. In *Koshland v. Columbia Ins. Co.*, 237 Mass. 467, 130 N.E. 41 (1921), a quantity of wool delayed at a mill for eight months for cleaning was held not to be covered by a policy insuring "only while goods are actually in transit." In *Commercial Union Assurance Co. v. Niger Co.*, 13 Lloyd's List 75 (1922), Lord Sumner said, "In transit, however, does not necessarily mean in motion or subject to a mere brief suspension of motion. How long a period of suspended movement will be consistent with the produce still being in transit depends on the circumstances."

without motion. In using the two terms together there is a slight contradiction. The clause would be more easily understood if it were, "In transit from," and when considered in connection with the riders or endorsements which are usually made a part of the policy it probably means no more than "in transit from." One of the terms of the customary endorsement is:

> This insurance attaches from the time the goods leave factory, store or warehouse at initial point of shipment, and covers thereafter continuously, in due course of transportation, until same are delivered at store or warehouse at destination.

As an endorsement supersedes anything inconsistent therewith in the policy it follows that the coverage does not begin until the goods leave factory, store or warehouse. Thus the word "at" in the body of the policy seems to have been rendered ineffective.[1]

The endorsed clause quoted above provides that the coverage continues until the goods in due course of transportation are delivered at store or warehouse at destination. This is merely an agreement between the parties embodying the general rule, which probably would be applied if there were no agreement, namely, that the transit continues until the goods are delivered in accordance with the terms of the contract of carriage or until they come into the actual or constructive possession of the consignee.[2] In applying that rule, it has been held that where cattle were shipped in railway cars the transit did not end until they were unloaded from the cars and placed in pens;[3] but a shipment of gasoline was

[1] This may not be true where, as in some policies, the clause is, "To be insured at and in transit between."

[2] *Davis v. Roper Lumber Co.*, 138 Va. 377, 400, 122 S.E. 113 (1924); *More v. Lott*, 13 Nev. 376 (1878); *Davis v. Gossett*, 30 Ga. App. 577, 118 S.E. 773 (1923).

[3] *Loesch v. Union Casualty Co.*, 176 Mo. 654, 668, 75 S.W. 621, 625 (1903).

held to have ceased being in transit when the railway car containing it was placed on the consignee's spur track and was taken in charge by the consignee's employees.[1]

The New York Court of Appeals by a divided court has extended the definition of "in transit" to cover a case where the actual and intended recipient of valuable securities received them and then absconded with them.[2] In that case the policy provided insurance against theft, larceny, etc., "while the property is in transit," and stipulated that the transit risk was to end "immediately upon delivery thereof at destination." The assured's messenger delivered the securities to the party to whom the assured had sent them and in pursuance of his employer's instructions took a receipt reserving title to the assured until the securities should be paid for. The recipient absconded at once, and the court held that as the purchaser had fraudulently devised the scheme to obtain possession of the securities and as possession was obtained by larceny, it could not be said that the larceny had occurred after the transit had ended. A similar result was reached by the same court (with better reason, it would seem), where a person posing as the purchaser fraudulently obtained possession of the securities from the messenger.[3]

20. The Endorsements.

The transportation policy is so devised as to give the assured the option of accepting one of three coverages. These coverages are provided by endorsements *A*, *B*, and *C*, each of which enumerates the risks insured against and the kind of carriers in which custody the goods will

[1] *Davis v. Gossett, supra.*

[2] *Hanson v. Nat. Surety Co.*, 257 N.Y. 216, 177 N.E. 425 (1931).

[3] *Underwood v. Globe Indemnity Co.*, 245 N.Y. 111, 156 N.E. 632 (1927). See also *Ocean Accident Corp. v. Old Nat. Bank*, 4 Fed. (2nd) 753 (1925).

be covered. It is provided that the policy "shall not be valid unless endorsement A, B, or C is attached hereto"; and the policy is not complete unless one of these three endorsements or some substitute therefor is attached.[1]

21. Endorsement A.

Endorsement A furnishes the broadest coverage.[2] It begins, "This Insurance covers only while the property insured is in the custody of:" and then enumerates the various types of carriers to whose custody the goods may be entrusted. They are as follows:

(*a*) Any railroad or railroad express company (including the risk while on ferries and/or in cars on transfers or lighters);

(*b*) The regular coastwise lines of steamers navigating United States Inland, Atlantic and Gulf waters not south of Gulf of Mexico (including risk of craft to and from the vessel, each craft or lighter to be considered as if separately insured); it being expressly understood, however, that this policy excludes and does not cover shipments by vessels navigating any canal, the Great Lakes, the Mississippi and Ohio Rivers, and their tributaries, or shipments by steamers navigating the Pacific Coast;

(*c*) Public truckmen, land transfer and/or land transportation companies, provided these carriers are used in connection with railroad, railroad express, and above-mentioned steamer shipments.

This policy also covers while on docks, wharves, piers, bulkheads, in depots, stations and/or on platforms, but only while in the custody of a common carrier incidental to transportation.[3]

[1] In practice, other printed or typewritten endorsements to meet special cases are often used instead of endorsements A, B and C. See *infra*, secs. 37-38.

[2] There is no uniformity among underwriters in the use of letters to designate the endorsements. In some policies endorsement A is the narrowest form.

[3] The only difference of any importance between endorsement A and endorsements B and C is that B does not cover the goods while on coastwise steamers and C omits the coverage while on coastwise steamers and does not insure against the risk of theft. See *infra*, sec. 35.

22. "In the Custody Of."

Occasionally some question arises as to whether the goods were in the custody of one of the enumerated carriers at the time of loss or damage. As a rule railroad companies, express companies, steamship lines, public truckmen, and other common carriers issue a bill of lading or some other document acknowledging receipt of the goods immediately they come into the carrier's hands, and when the goods leave the carrier's custody a receipt is required of the consignee. The question as to who has the custody of the goods at any particular time is therefore easy to determine.

Nevertheless, over-zealous assured have sought recoveries in some instances where it should have been clear that the goods were not lost while in the custody of the carriers mentioned in the policy. In one such case[1] the defendant had issued a commercial traveler's policy insuring against all risks "while in the custody of any railroad, express, transfer, and/or transportation company. . . . " While the plaintiff was stopping at a hotel, his trunks were put in the sample room of the hotel. A flood arose and the salesman engaged a transfer company to remove the trunks to a place of safety. Before the transfer company could act, the flood damaged the trunks. The plaintiff contended that it was the purpose of the policy to cover all transportation casualties. The court held that at the time the goods were damaged they were not in the custody of any of the carriers mentioned, and said:

> The words "in the custody of" imply guardianship, and necessarily carry with them an implication of responsibility of the custodian.

[1] *Posner v. Ins. Co. of North America*, 300 Fed. 383 (1924). As to the meaning of custody, see also *Martin v. United States*, 160 Fed. 198, 204 (1909).

In another case,[1] plaintiff hired a truck by the month to carry his goods to railroad stations and steamship piers. A load of his goods was not delivered because the carrier's station was closed for the day. They were not returned to plaintiff because his warehouse also was closed. In this predicament plaintiff's employee took them to a stable the owner of which was in the business of hiring out trucks and horses, although he was not a public truckman, and left the goods and the truck there for the night. The goods were stolen, and plaintiff sued to recover on his policy. The policy covered numerous risks including theft "from the time the property insured passes into the custody of any licensed common carrier, for transportation only by land, and/or while on ferries, and/or in cars on transfers, in connection therewith, until delivered by common carrier at destination." The court held that the stable company was not a common carrier and hence that the goods when stolen were not in the custody of a common carrier.[2]

23. Goods Covered Only While in Custody of Certain Carriers.

The carriers in whose custody the goods are covered are clearly enumerated in the clauses quoted above. The

[1] *Krohnberg v. Federal Ins. Co.*, 171 N.Y. Supp. 169 (1918), affd. 188 A.D. 912, 175 N.Y. S. 908.

[2] In a recent case it was held that a loss by fire of theatrical property while on a truck owned and operated by the owner of the goods was not a loss while in the custody of a common carrier. *Nat. Union Fire Ins. Co. v. Frisco Frolics Co.*, 65 Fed. (2nd) 928 (1933). Goods left in a taxicab for five minutes by a passenger are not in the custody of the taxi driver even though an extra charge is made for carrying them. *Lynch v. American Eagle Fire Ins. Co.*, 220 A.D. 196, 221 N.Y. Supp. 4, affd. 247 N.Y. 600, 161 N.E. 198 (1927), but see *Birgbauer v. Aetna Ins. Co.*, 251 Mich. 614, 232 N.W. 403 (1930), where a salesman left a bag containing diamonds in a locked car and was robbed of the key within sight of the car and the diamonds stolen. Held, the diamonds were "in the actual care and custody" of the salesman.

list is quite comprehensive and is designed to insure the goods at all times while they are in the custody of these carriers, whether actually in transit or only technically in transit, as when they are on wharves or in railway stations incidentally to being transported. Shipments by vessels navigating canals, the Great Lakes, the Mississippi and Ohio Rivers, and some other places are excluded. The coverage is not extended to goods in the custody of public truckmen or "land transfer and/or land transportation companies" generally, but merely to such of these as are used in connection with the other carriers mentioned. Nor does the policy insure the property while it is on wharves, in stations, and so forth, unless it be in the custody of one of the common carriers named incidentally to transportation.

24. The Risks Insured Against.

Following the description of the carriers in whose custody the goods are insured under endorsement A is an agreement indicating the risks against which the insurance (with endorsement A attached) is written. The risks are described as follows:

(*a*) While on land against loss or damage caused by fire, lightning, cyclone, tornado, flood; collision (the coming together of cars during coupling not to be deemed a collision), derailment and overturning of vehicle; and other perils of transportation;

(*b*) While water-borne, against loss or damage caused by fire and perils of the sea, including general average and/or salvage charges and expenses, but free of particular average unless amounting to 3 per cent of the value of each case or package;

(*c*) Against theft of an entire shipping package only, but does not include pilferage.

25. Risks Covered While on Land.

While the goods are in course of transportation on land, they are insured against loss or damage caused by

fire, lightning, cyclone, tornado, flood, collision, derailment and overturning of vehicle, and other perils of transportation. They are insured also against theft, if an entire package be stolen, but not against pilferage. All losses of which any one of these risks is the proximate cause are recoverable under the policy. Much difficulty is encountered at times in determining whether a particular loss is the proximate result of a peril insured against or was proximately caused by some other event.[1] It has been said that proximate cause means last cause in any succession of events resulting in damage, and hence that only the last cause need be considered. On the other hand, it has been said that the cause which is truly proximate is that which is proximate in efficiency, the really effective cause of what happened. The Supreme Court has held the proximate cause to be the primary and efficient cause, the one that necessarily sets the damaging force in operation.[2]

26. Fire.

Whatever the proper rule may be as to proximate cause, our courts decided long ago that a policy insuring against fire covers not only losses by ignition but also damage caused by smoke,[3] and by water used to quench

[1] *Homac Corp. v. Sun Oil Co.*, 258 N.Y. 462, 180 N.E. 172 (1931).

[2] *The G. R. Booth*, 171 U.S. 450, 19 Sup. Ct. Rep. 9, 43 L. ed. 234 (1898). But see *Queen Ins. Co. v. Globe & Rutgers Ins. Co.*, 263 U.S. 487, 492, 44 Sup. Ct. Rep. 175, 68 L. ed. 402 (1923). For a discussion of "Proximate Cause in Marine Insurance," see article under that title by D. Roger Englar in *Live Articles on Marine Insurance*, No. 2, p. 109, published by The Weekly Underwriter in 1919.

[3] *Scripture v. Lowell Mutual Ins. Co.*, 64 Mass. 356, 57 Am. Dec. 111 (1852); *Whitehurst v. Fay Ins. Co.*, 51 N.C. 352 (1859); *Case v. Hartford Fire Ins. Co.*, 13 Ill. 676 (1852).

the fire,[1] and by theft during a fire,[2] and by handling[3] and other causes[4] during the removal of the goods from the proximity of fire. However, there must be actual fire. Spontaneous combustion, without fire[5] or heat sufficient to ignite, is not fire;[6] and the loss of use of the insured property and loss of profits from such use are too remote to be considered.[7] It matters not what causes the fire. The insurer is liable, whether the fire be due to the negligence of the assured[8] or to the incendiarism of others[9] or to explosion or lightning provided fire ensues.[10]

[1] *John Davis & Co. v. Ins. Co. of North America*, 115 Minn. 382, 73 N.W. 393 (1897); *Boak v. Manchester Fire Assurance Co.*, 84 Minn. 419 87 N.W. 932 (1901).

[2] *Queen Ins. Co. v. Patterson Drug Co.*, 73 Fla. 665, 74 So. 807 (1917); *Leiber v. Liverpool Ins. Co.*, 69 Ky. 639 (1869); *Whitehurst v. Fay Ins. Co., supra; Independent Mutual Ins. Co. v. Agnew*, 34 Pa. St. 96 (1859); *Tilton v. Hamilton Ins. Co.*, 14 How. Pr. 363 (N.Y.) (1857).

[3] *Ins. Co. of North America v. Leader*, 121 Ga. 260, 48 S.E. 972 (1904); *Case v. Hartford Ins. Co., supra.*

[4] *Talamon v. Home Ins. Co.*, 16 La. Ann. 426 (1862); *White v. Republic Ins. Co.*, 57 Me. 91 (1869).

[5] *Western Mill Co. v. No. Assurance Co.*, 139 Fed. 637 (1905); *Sun Ins. Office v. Woolen Mill Co.*, 72 Kan. 41, 82 Pac. 513 (1905).

[6] *Gibbons v. German Ins. Institute*, 30 Ill. App. 263 (1889).

[7] *Farmer's Ins. Co. v. New Holland Co.*, 122 Pa. St. 37, 15 Atl. 563 (1888); *Nible v. North American Fire Ins. Co.*, 1 Sandf. (N.Y.) 551 (1848); *Niagara Fire Ins. Co. v. Heflin*, 22 Ky. L. Rep. 1212, 60 S.W. 393 (1901).

[8] *Columbia Ins. Co. v. Lawrence*, 10 Pet. 507, 9 L. ed. 512 (1836); *Karow v. Cont. Ins. Co.*, 57 Wis. 56 (1883), and cases cited there. The transportation policy does not insure against loss caused by the assured's neglect to use reasonable means to save the property when it is endangered by fire. *Infra*, sec. 36.

[9] *Union Ins. Co. v. McCullough*, 96 N.W. 79, (Neb.) (1901).

[10] *Orient Ins. Co. v. Leonard*, 120 Fed. 808 (1902); *Babcock v. Montgomery Ins. Co.*, 4 N.Y. 326 (1850); *Dows v. Faneuil Hall Ins. Co.*, 127 Mass. 346 (1879); *Kenniston v. Mer. County Ins. Co.*, 14 N.H. 341 (1843). Where a fire broke out near some explosives and caused damage to a barge 1000 ft. distant, the damage to the barge was held not to be due to fire. *Bird v. St. Paul Ins. Co.*, 224 N.Y. 47, 120 N.E. 86 (1916).

27. Lightning, Cyclone, Tornado, Flood.

As insurance against fire does not cover a loss due to lightning without an ensuing fire, most policies against fire specifically include lightning also. The transportation policy insures against lightning and also against cyclone, tornado, and flood, in addition to fire. These words, like all others used in insurance policies, must if possible be given their common and ordinary meanings. The courts do not look with favor on attempts to confine them to scientific definitions. Lightning, for example, is said to be merely a sudden discharge of electricity from a cloud to the earth,[1] and cyclone will not be limited to "high winds rotating about a center of low atmospheric pressure and this center moving onward with greater or less velocity." In its popular sense the word cyclone means a wind storm distinguished by its concentrated force and violence, and should be so construed.[2] In fact when used in an insurance policy, it means the same as tornado, *i.e.*, a violent storm distinguished by the vehemence of the wind and its sudden changes.[3]

A flood is defined in some policies as the rising of navigable waters. In the transportation policy its ordinary meaning is neither defined nor limited. As thus used, it probably would be held to cover any overflowing of land not usually covered by water, and perhaps also the bursting of water mains, water tanks, and so forth, when their contents get out of control and cause damage.

[1] *Babcock v. Montgomery Ins. Co.*, 4 N.Y. 326 (1850). Losses proximately caused by lightning, such as damage to goods by falling into water and debris, are of course within the coverage, *Cummings v. Penn. Fire Ins. Co.*, 153 Iowa 579, 134 N.W. 79 (1912).

[2] *Maryland Casualty Co. v. Finch*, 147 Fed. 388 (1906).

[3] *Queen Ins. Co. v. The Hudnut Co.*, 8 Ind. App. 22, 35 N.E. 397 (1893). In *Tupper v. Mass. Ins. Co.*, 156 Minn. 65, 194 N.W. 99 (1923), it was said, *obiter*, that cyclone and tornado are not synonymous terms.

28. Collision, Derailment and Overturning.

The term collision, like flood, is not limited or defined in the transportation policy, except for the provision that the coming together of cars during coupling is not to be deemed a collision. The collisions referred to in the policy are collisions involving vehicles traveling on land, such as railway cars, automobiles, and the like. We are not concerned for the moment with collisions at sea, which were the subject of many decisions under the marine policy. Those decisions gave a broad interpretation to the term, but its meaning as used in connection with land transportation has been extended so far that it now comprehends many situations which in common and ordinary language would not be described as collisions at all.

Under the marine policy, the New York courts have extended the meaning of collision to include the impact of a vessel with any floating object and perhaps with stationary objects,[1] but the Federal Courts have declined to extend the meaning of the word to include the case of a vessel striking the riprap on the side of a canal.[2] However, under automobile policies, collision, usually defined to include contact with stationary as well as moving objects, has been held by some courts to include the contact of the car with the roadbed when upset by making a sudden turn,[3] running into an embankment,[4]

[1] *Carroll Towing Co. v. Aetna Ins. Co.*, 203 A. D. 430, 196 N.Y. Supp. 698, 1923 A.M.C. 77; *Newtown Creek Towing Co. v. Aetna Ins. Co.*, 23 A. D. 152, 48 N.Y. Supp. 927 (1897), rev. 163 N.Y. 114, 57 N.E. 302.

[2] *Lehigh Coal Co. v. Globe & Rutgers Ins. Co.*, 6 Fed. (2nd) 736, 1925 A.M.C. 717.

[3] *Great American Indem. Co. v. Jones*, 111 Ohio St. 84, 144 N.E. 596 (1924).

[4] *Pred v. Employers' Indem. Corp.*, 112 Neb. 161, 198 N.W. 864 (1924); *Interstate Casualty Co. v. Stewart*, 208 Ala. 377, 94 So. 345 (1922); *Southern Casualty Co. v. Johnson*, 24 Ariz. 221, 207 Pac. 987 (1922); *Columbia Ins. Co. v. Chatterjee*, 93 Okla. 249, 219 Pac. 102 (1923).

striking a rut and skidding into a ditch,[1] running off the road and overturning,[2] the fall of an elevator in which the car was being lowered,[3] and the falling of a steam shovel onto a truck while loading the truck.[4] Of course many courts refuse to go so far, and some of them announce doctrines contrary to those mentioned above. These courts have held that collision does not include contact with the earth in falling over an embankment,[5] or upsetting and striking the roadbed,[6] or running off the road,[7] or skidding against an embankment,[8] or the falling of an upper floor so that it strikes the top of the car.[9]

The holdings referred to above indicate the confusion of the decisions and the liability to which the unlimited use of the word collision may lead. It is scarcely to be expected that it will receive a narrower interpretation in the transportation policy than in the automobile policy.

In view of the broad interpretation given to the term collision by many courts, the words "derailment and overturning" do not add much to the policy. "Derailment" of course is applicable only to vehicles running on rails,[10] while "overturning" refers to that

[1] *Wood v. Southern Casualty Co.*, 270 S.W. (Tex.) 1055 (1925); *Fireman's Fund Ins. Co. v. Savery*, 143 N.E. (Ind.) 612 (1924).

[2] *Polstein v. Pacific Fire Ins. Co.*, 203 N.Y. Supp. 362, 122 Misc. 194 (1924).

[3] *Freiberger v. Globe Indem. Co.*, 205 A.D. 116, 199 N.Y. Supp. 310 (1923).

[4] *Universal Service Co. v. American Ins. Co.*, 213 Mich. 523, 181 N.W. 1007 (1921).

[5] *Cont. Casualty Co. v. Paul*, 209 Ala. 166, 95 So. 814 (1923).

[6] *Brown v. Union Indem. Co.*, 159 La. 641, 105 So. 918 (1925); *Bell v. American Ins. Co.*, 173 Wis. 533, 181 N.W. 733 (1921).

[7] *Ploe v. International Indem. Co.*, 128 Wash. 480, 223 Pac. 327 (1924).

[8] *Fox v. Interstate Exch.*, 182 Wis. 28, 195 N.W. 842 (1923).

[9] *O'Leary v. St. Paul Fire & Marine Ins. Co.*, 196 S.W. (Tex.) 575 (1917).

[10] See *infra*, sec. 80*a*, *n.*

kind of vehicle and others as well. Such accidents are among the risks insured.

29. Other Perils of Transportation.

The use of the words "*other perils of transportation*" does not extend the coverage to all other perils, for by the rule of *ejusdem generis* "other perils of transportation" must be understood to mean only perils similar in kind to the perils already specifically mentioned in the policy.[1] However, the courts are generally inclined to include all perils which may reasonably be said to be similar to those specifically enumerated. Thus while it has been held that perils of the sea do not include damage to a ship by wind while being hauled out on a marine railway,[2] or damage merely by being beached for repairs[3] or springing a leak and sinking in port,[4] nevertheless, such disasters are perils *ejusdem generis* with perils of the sea. On the other hand mere sea water wetting to goods is not within the other perils clause.[5] It is to be expected that "other perils of transportation" will be given as broad an interpretation as has been given to "all other perils" in the marine policy.[6]

[1] Arnould, 11th ed. sec. 860; *Monongahela Ins. Co. v. Chester*, 43 Pa. St. 491 (1862); *Bluefields v. Western Assurance Co.*, 265 Fed. 221, 227 (1920); *Emery v. American Ins. Co.*, 177 Ia. 4, 158 N.W. 748 (1916).

[2] *Ellery v. New Eng. Ins. Co.*, 8 Pick. (Mass.) 14 (1829).

[3] *Swift v. Union Ins. Co.*, 122 Mass. 573 (1877).

[4] *Gartside v. Orphans' Benefit Ins. Co.*, 62 Mo. 322 (1876).

[5] *Union Marine Ins. Co. v. Stone*, 15 Fed. (2nd) 937 (1926); *Borgemeister v. Union Ins. Soc.*, 127 Misc. 9, 214 N.Y. Supp. 548, 1926 A.M.C. 277.

[6] Mysterious disappearance while in transit would seem to be a peril of transportation, *Windsor Mfg. Co. v. G. & R. Ins. Co.*, 277 Pa. 374, 121 Atl. 328 (1923); likewise injuries to cattle by rough handling of railway cars, *Estes v. Hartford Fire Ins. Co.*, 201 S.W. 563 (Mo.) (1917). Where a mule jumped from a railway car from which it was about to be unloaded and killed itself, the loss was held to be due to a peril of the railway, *Aetna Ins. Co. v. Stivers*, 47 Ill. 86 (1868). As to losses "while being transported," see *Johnson v. Glens Falls Ins. Co.*, 131 S.C. 253, 127

The other perils clause will not of course permit a recovery for losses specifically excluded by the terms of the policy.[1]

30. Risks Covered while Water-borne.

While the goods of the assured are in course of transportation by water, they are insured against loss and damage by risks to which such transportation is subject. The risks covered are fire and perils of the sea, including general average and salvage charges. The risk of fire, a risk common to both the land and the sea, has been considered above in connection with the risks covered during transportation by land.[2] Perils of the sea, general average, and salvage will be considered below.

31. Perils of the Sea.

It is not easy to define perils of the sea by any general definition establishing categories by which losses or damage to cargo at sea may be readily classified as being within or without the coverage. Arnould said that the words obviously embrace all kinds of marine casualties, such as shipwreck, foundering, stranding, and all kinds of damage to the ship or the goods it carries by the violent and immediate action of the winds and waves. The authors of the later editions of his work would omit the word "violent." It is enough, they say,

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S.E. 14 (1924); *Wheeler v. G. & R. Ins. Co.*, 125 S.C. 320, 118 S.E. 609 (1923); *Importers Ins. Co. v. Jones*, 166 Ark. 370, 266 S.W. 286 (1924); *Nat. Fire Ins. Co. v. Elliott*, 7 Fed. (2nd) 522 (1925).

[1] Arnould, sec. 860. In sec. 861*b* the author says that there seems to be no room for the *ejusdem generis* limitation in a policy against all risks, and in *Mellon v. Federal Ins. Co.*, 14 Fed. (2nd) 997 (1926), it was held that "other causes of whatsoever nature" means the same as "all risks." See *infra*, sec. 37.

[2] *Supra*, sec. 26.

that the damage be done by the fortuitous action of the sea.[1]

Rule 7 of the Rules for Construction of the Policy in the First Schedule of the British Marine Insurance Act, 1906, provides:

> The term "peril of the seas" refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of winds and waves.

In New York the Court of Appeals has said:

> The phrase "perils of the sea" as used in a policy of marine insurance is not limited to extraordinary perils. It covers all kinds of marine casualties due to the fortuitous action of the sea such as sinking or capsizing . . . but it includes only a *sea* damage occurring at sea, a peril *of* the sea. A peril *on* the sea is not enough.[2]

31*a*. *Loss Must Be Fortuitous.*—The loss must be fortuitous, *i.e.*, it must happen by chance or accident.[3] It is not enough that goods while on shipboard come in contact with sea water.[4] The cause of the contact must be shown. If it be found to be due to an accident, the assured should recover. It has been held that damage caused by rain blown against cargo on a lighter was due to a sea peril,[5] and that sea water damage to cargo caused by the gnawing of rats was due to a sea peril within the meaning of a bill of lading exception.[6] Sea water damage caused by leaking of the ship in heavy

[1] Arnould, 11th ed. sec. 812.

[2] *Cary v. Home Ins. Co.*, 235 N.Y. 296, 139 N.E. 274 (1923).

[3] *Kermani v. Ins. Co. of North America*, 255 N.Y. Supp. 687, 142 Misc. 542 (1932).

[4] *Union Marine Ins. Co. v. Stone*, 15 Fed. (2nd) 937 (1926); *Borgemeister v. Union Ins. Soc.*, 127 Misc. 9, 214 N.Y. Supp. 548, 1926 A.M.C. 277; *Kermani v. North America*, *supra*. But see *Whiting v. New Zealand Ins. Co.*, 44 Lloyd's List 179 (1932).

[5] *Tyson v. Union Ins. Soc.*, 8 Fed. (2nd) 356, 1924 A.M.C. 1145.

[6] *Hamilton v. Pandorf*, L.R. 12 A.C. 518 (1887).

weather is included.[1] This is true even though the water does not actually touch the cargo. It was so held where during rough weather water entered the ship's hold and made a quantity of hides so putrid that the fumes damaged the assured's tobacco. The tobacco, said the court, was damaged by a peril of the sea.[2]

31*b*. *Collision a Sea Peril.*—A collision of course is a peril of the sea, and sinkings generally are held to be, though there may be some question as to whether every sinking is a sea peril. The English cases seem to hold that any sinking by reason of the accidental entry of sea water into a vessel, however caused, is a peril of the sea;[3] and the Appellate Division in New York state has gone almost as far as the English courts. In *McAllister v. Western Assurance Co.*,[4] a barge's seams were opened by the faulty manner in which her cargo was discharged. Sea water came through and sank her. The Appellate Division said:

> a truly accidental occurrence, peculiar to the sea, such as the entry of the sea water through the seams of a vessel, which have opened, or through a hole in her hull (neither occurrence happening through design), constitutes a peril of the sea, within the meaning of a policy of marine insurance.

The cases in the Federal Courts of the United States are to some extent contrary to the English decisions and the decisions of the Appellate Division of New York State. In the Federal courts the test as to whether a given loss is due to a peril of the sea seems to be whether

[1] *Arbib v. Second Russian Ins. Co.*, 294 Fed. 811, 1924 A.M.C. 16.

[2] *Montoya v. London Assurance Co.*, 6 Exch. 415 (1851).

[3] *Hamilton v. Pandorf*, L.R. 12 A.C. 518 (1887); *The Xantho*, L.R. 12 A.C. 503 (1887); *Cohen v. Nat. Benefit Assn.*, 18 Lloyd's List 199 (1924); *Blackburn v. Liverpool Nav. Co.*, L.R. [1902] 1 K.B. 290; *Olympia v. Union Marine Ins. Co.*, 10 Fed. (2nd) 72, 1926 A.M.C. 181.

[4] 218 A. D. 564, 218 N.Y. Supp. 658, 1927 A.M.C. 104; but see *Cary v. Home Ins. Co.*, 235 N.Y. 296, 139 N.E. 274 (1923).

the entry of sea water was the primary and efficient cause of the loss or whether there was some other superior or controlling agency.

In *Prohaska v. St. Paul Fire and Marine Insurance Co.*,[1] a vessel was on shipways for repairs. After some of her planks had been removed, the fastenings holding the boat gave way and she slid down the ways into the water. The water rushed through the hole made by the removal of the planks, and the boat sank. The court held that the loss was not due to "the unavoidable dangers of the rivers," the risk insured against, but was due to the breaking of the fastenings.[2]

In *The G. R. Booth*,[3] water entered the vessel through a hole caused by the accidental explosion of a case of detonators in the ship's hold, and the boat sank. The owner of the vessel was sued for damage to cargo and defended on the ground that he was not liable since the damage was caused by a peril of the sea, one of the exceptions in the bill of lading. The court held that the loss was caused not by a peril of the sea but by the explosion.

In *The Zulia*,[4] the libellants were owners of cargo which had been loaded on board the steamship *Zulia* at New York. While stevedores were engaged in loading a 35-foot iron shaft which weighed 3,500 pounds, the shaft slipped out of its case and out of the slings

[1] 270 Fed. 91 (1921).

[2] If the policy had contained the "other perils" clause, recovery should, it would seem, have been allowed. *Gartside v. Orphans' Benefit Ins. Co.*, 62 Mo. 322 (1876).

[3] 171 U.S. 450, 19 Sup. Ct. Rep. 9, 43 L. ed. 234 (1898).

[4] 235 Fed. 433 (1916). See *Western Assurance Co. v. Shaw*, 11 Fed. (2nd) 495, 1926 A.M.C 578, where a barge sank due to the shifting at night of three heavy boilers. The court held that the loss was not due to a peril of the sea but to "want of ordinary care and skill in loading," one of the exceptions in the policy. See also *The No. 7*, 31 Fed. (2nd) 149, 1929 A.M.C. 372, rev. 37 Fed. (2nd) 29, 1930 A.M.C. 198.

which held it suspended over the hatchway and fell to the hold, piercing the bottom of the ship. The ship sank and damaged libellant's cargo. The bills of lading contained exceptions for damage due to perils of the sea. The court, relying on the decision in *The G. R. Booth*, held that the loss was not due to a sea peril, and said:

> It is settled in this country by the case of the *G. R. Booth, supra.* that if the predominant cause is not in itself a peril of the sea, the simultaneous entry of sea water does not make it such.

31c. *Natural Deterioration.*—The question frequently arises as to whether natural deterioration of perishable cargoes caused by delay due to heavy weather or a peril insured against is covered by the term perils of the seas. It seems to be well settled that damage due merely to delay caused by heavy weather is not covered. The courts take the position that heavy weather is to be expected and that prolongation of the voyage thereby is not a sea peril.[1] However, if the delay to which the deterioration is due be caused by a sea peril, the loss has been held to be covered.

In *Brandyce v. U.S. Lloyds, Inc.*,[2] a vessel carrying a cargo of potatoes from New York to Cuba was damaged by collision with some unknown object and had to put in to Charleston for repairs. It became necessary to discharge the cargo; and as the delay caused the potatoes to rot and sprout, they were sold at a loss. The court held that the proximate cause of the loss was the collision, a peril insured against, and hence that the underwriters were liable. In *Tudor v. New England Mutual Marine Insurance Co.*,[3] a ship carrying a cargo of ice sprang a

[1] *Cory v. Boylston Ins. Co.*, 107 Mass. 140 (1871); *Perry v. Cobb*, 88 Me. 435, 34 Atl. 278 (1896). *Taylor v. Dunbar*, L.R. 4 C.P. 206 (1869).

[2] 207 A. D. 665, 203 N.Y. Supp. 10, 1924 A.M.C. 365, affd. 239 N.Y. 573, 147 N.E. 201.

[3] 12 Cush. (Mass.) 554 (1853).

leak and had to put in to a port of refuge. The ice, found to be melting due to contact with sea water, was sold at a loss, and it was held that the loss was caused by a peril of the sea.[1]

It is of course impossible to refer to all the decisions regarding perils of the sea. The principle emphasized by the courts is that the loss must be fortuitous. It must be caused by a peril *of* the sea, not merely *on* the sea.

32. General Average.

General average is a matter which theoretically concerns shipowners and cargo owners but which as a matter of practice concerns principally cargo and hull underwriters. As the transportation policy insures the cargo owner against losses through general average, it becomes a subject for consideration here. The assured need not trouble himself very much about such losses, since the almost universal practice of underwriters relieves him of responsibility for all claims arising through general average.[2] Underwriters, however, often find themselves confronted with difficult problems.

When the assured under a transportation or a marine policy is called on by a vessel owner asserting his lien to make a general average deposit or to furnish a general average bond before the goods will be delivered, he reports the matter at once to his insurer. The latter

[1] In *Pink v. Fleming*, L.R. 25 Q.B.D. 396 (1890), a contrary result was reached, but the court admitted that the American decisions were not in accord with the English decisions on this point. As was pointed out in the Brandyce case later decisions of the English courts have cast doubt on the authority of *Pink v. Fleming*.

[2] Where the cargo is insured under a valued policy, the assured is a co-insurer to the extent that the sound value at time of contribution exceeds the agreed value, *Gulf Refining Co. v. Atlantic Mutual Ins. Co.*, 279 U.S. 708, 49 Sup. Ct. Rep. 439, 73 L. ed. 914, 1929 A.M.C. 825. In such cases the assured may be called on to contribute.

ordinarily communicates with the shipowner and offers to give a guaranty for the payment of all proper general average charges. If the underwriter is known to the shipowner or his adjuster and is considered sound financially, the guaranty is as a rule accepted and the goods delivered; but if the underwriter is unknown to the shipowner's representatives or considered unsound financially, it is not uncommon for the latter to demand a cash deposit or a surety company bond before delivering the goods. The amount of the deposit demanded is such a percentage of the value of the goods as will cover all the estimated general average charges.

In due course, a general average statement is prepared, showing the amount of the contribution due from each of the interests involved. If a guaranty was given, the underwriter is asked to pay; but if a cash deposit was made, the money is applied to the payment of the charges. The excess, if any, is returned to the depositor or to the insurance company, to which in the meantime it has usually been assigned.

It may turn out that the shipowner was not justified in claiming that a general average loss had been incurred, or it may develop that payment is demanded for sacrifices or expenses that are not proper general average charges. In either event the practice is for the underwriter to bear the expense of resisting payment or suing for a return of the deposit. Thus the assured is relieved of practically all responsibility with respect to claims for general average contributions.

32*a*. *Important Features of General Average.*—The subject of general average has been treated at length by eminent authorities,[1] and it is feasible here to consider

[1] See Lowndes, *The Law of General Average*, now in its sixth edition; Gourlie, *General Average*; Coe, *Law and Practice of General Average in The United States*, which first appeared as an appendix to the fifth edition

only briefly the nature of the subject and some of its principal features. Arnould has pointed out that the term "general average" is used to denote the kind of loss which gives rise to a claim for a general average contribution and also to denote the contribution itself. The author thinks it better to use the terms "general average loss" and "general average contribution" in order to avoid confusion. At the moment we are interested only in general average losses. Such a loss is defined by Section 66 of the Marine Insurance Act, 1906, as follows:

> Subsec. 1. A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.
>
> Subsec. 2. There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

Thus a general average act may be either a voluntary sacrifice by ship or cargo, or an expenditure made for the preservation of the property. Arnould says that before a claim for a general average contribution can be established, it must be shown that the loss sustained arose not from an accident but from an intentional sacrifice purposely resorted to for the general safety under the pressure of real and imminent danger or from an extraordinary expenditure incurred with a view of completing the intended adventure. Such a sacrifice or expenditure must be judiciously incurred, says the author, and if an expenditure it must not be an ordinary duty or expense incidental to the navigation of the ship. Furthermore, the sacrifice or expenditure must not be due to any

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of Lowndes' work; Arnould, *On Marine Insurance and Average,* 11th ed., Part III, Ch. IV; Dixon, *Adjustment of General Average;* Congdon, *General Average;* 58 Corpus Juris 607. For a brief non-technical treatment see Winter, *Marine Insurance,* 2nd ed. Ch. 18.

wrongful act for which the claimant is responsible,[1] and the attempt to avoid the peril must be successful.[2]

32*b*. *Illustrations.*—The simplest example of a general average sacrifice is the jettison of goods or the cutting away of part of the ship in order to save the rest at a time when both ship and cargo are threatened with destruction. If by means of such a sacrifice the rest of the property is saved, the owners thereof must contribute according to maritime law in order to recompense the party whose property was sacrificed. As was said in the earliest reported English case on the subject,

> All loss which arises in consequence of extraordinary sacrifices made or expences incurred for the preservation of the ship and cargo comes within general average, and must be borne proportionably by all who are interested.[3]

Another example of voluntary sacrifice is the damage to or destruction of property by water or steam used to extinguish a fire. While the damage done by the fire is not recoverable in general average, because it is not a voluntary sacrifice, the damage done by the water or steam used to extinguish the fire is recoverable, because it was voluntarily incurred for the common benefit.[4] A voluntary sacrifice is made also where the ship is

[1] Arnould, 11th ed. sec. 918 and note. Coe, p. 48. While the rule is that no claim may arise for a general average contribution if the loss be due to the shipowner's negligence, this difficulty is avoided by the use of the Jason clause in the bill of lading. See *The Jason*, 225 U.S. 32, 32 Sup. Ct. Rep. 560, 56 L. ed. 969 (1911).

[2] *Barnard v. Adams*, 10 How. 270, 303, 13 L. ed. 417 (1850). *Ralli v. Troop*, 157 U.S. 386, 394, 15 Sup. Ct. Rep. 657, 39 L. ed. 742 (1894).

[3] *Birkley v. Presgrave*, 1 East 220 (1801). In this case a part of the ship's furnishings were thrown overboard.

[4] *Nimick v. Holmes*, 25 Pa. 366 (1855); *Reliance Marine Ins. Co. v. N.Y. Mail Co.*, 77 Fed. 317 (1896); *Stewart v. West India Co.*, L.R. 8 Q.B. 88, (1873); Lowndes, 6th ed. sec. 13.

scuttled to quench a fire[1] or voluntarily stranded in order to avoid disaster.[2]

In all such cases the underwriter on the property which is sacrificed becomes liable to recompense the owner of the property for his loss. On payment, the underwriter becomes subrogated to the owner's right to demand contribution from the other interests, which in turn are ordinarily protected by their respective underwriters.

A more frequent cause of general average losses arises out of extraordinary expenditures made for the common benefit at a time when ship and cargo are imperiled. If a ship springs a leak or becomes otherwise disabled and the master in order to prevent the vessel and her cargo from being lost seeks a port of refuge so that repairs may be made and the voyage continued, the wages and provisions of the crew until the voyage is resumed, the expense of entering the port, and the cost of unloading, warehousing, and reloading the cargo are chargeable as general average expenses.[3] The expense of hiring tugs to release a stranded vessel[4] as well as salvage expense necessarily incurred for the common benefit[5] are likewise allowable in general average.

[1] *Achard v. Ring*, 31 L.T. 647 (1874); *Papayanni v. Grampian S.S. Co.* 1 Com. Cas. 448 (1896). But the ship must be scuttled by the master for the sole object of saving the particular ship and cargo. *Ralli v. Troop*, 157 U.S. 386, 15 Sup. Ct. Rep. 657, 39 L. ed. 742 (1894).

[2] *Fowler v. Rathbones*, 12 Wall. (U.S.) 102, 20 L. ed. 281 (1870); *Star of Hope*, 9 Wall. 203, 19 L. ed. 638 (1869); *Norwich Trans. Co. v. Ins. Co. of North America*, 118 Fed. 307 (1902). This is contrary to the rule in England. Richards, 4th ed. p. 307.

[3] *The Joseph Farwell*, 31 Fed. 844 (1887).

[4] *Magdala v. Baars*, 101 Fed. 303 (1900).

[5] *The Jason*, 178 Fed. 414 (1910); Coe, p. 41. Carver points out that logically salvage charges should not be allowed in general average, because the salvor has a separate lien on ship and on cargo for his services. Carver, 7th ed. sec. 394. Arnould agrees, 11th ed. sec. 964.

In the absence of some agreement to the contrary, the general average adjustment is made at the port of destination, and the law of that port governs the adjustment. The rules of practice for making the adjustment vary considerably in different countries, but some harmony has been brought about by the habit of providing in bills of lading that the York-Antwerp rules of 1890 or 1924 shall be used in case a general average situation arises.

33. Salvage Charges and Expenses.

The salvage charges insured against by the transportation policy are those charges which the cargo may incur by reason of being saved by voluntary salvors from loss or damage from an impending peril. If the ship goes aground and is removed from the strand, or if she is removed from a burning pier, or if she is disabled at sea or runs out of fuel and is towed to a port of refuge, the salvor becomes entitled to a salvage award. He has a lien on both ship and cargo for the value of his services and may sue either or both for payment.[1] In order to entitle the salvor to an award, however, his services must have been rendered voluntarily and with the master's consent. If he is an agent of the ship or cargo, or if he is under a duty to save them, he cannot claim salvage, for in that event he has only performed his duty. He must be a volunteer.[2] Furthermore, the salvor must succeed in whole or in part or at least his service must contribute to saving the property in order to entitle him to an award.[3]

[1] *The Sabine*, 101 U.S. 384, 25 L. ed. 982 (1879); *The Roanoke*, 50 Fed. 574 (1892).

[2] *The Alabama*, 280 Fed. 738 (1922); *The Sabine, supra.*

[3] *Id., The Annie Lord*, 251 Fed. 157 (1917).

There is no general rule by which the amount of the award is fixed. That depends on the labor expended by the salvors; the skill, energy, and promptitude with which the service is rendered; the value of the salving property and the risks to which it is exposed; the values saved; and the degree of danger from which the salved property is rescued.[1] While each case must be determined on its own merits, the courts strive to make the salvor's recompense sufficient to induce other salvors to perform similar services.[2] Sometimes the salvage service is performed in pursuance of a contract, but very often it is rendered without any definite agreement as to payment. If there is a contract, the court will enforce it, but if not, the court will base its award on the principles mentioned above.

Claims for salvage, like claims for general average contributions, are as a rule defended and, when liability exists, paid by the insurer. If an undertaking to pay an award is required, it is generally furnished by the insurer.

34. Particular Average.

After enumerating the risks insured while the goods are water-borne, the transportation policy provides, "but free of particular average unless amounting to 3 per cent of the value of each case or package." This is the so-called "with average clause," which is of considerable importance in the marine insurance policy.[3] Particular average is the term used to describe a partial loss caused by a peril insured against, which is not the result of a

[1] *The Blackwall*, 10 Wall. 1, 14, 19 L. ed. 870; 56 Corpus Juris 61 (1869).

[2] *The Blaireau*, 2 Cranch 240, 266, 2 L. ed. 266 (1804); *The Shreveport*, 42 Fed. (2nd) 524, 534 (1930).

[3] See Winter, pp. 213–216, for a discussion of various average clauses.

general average act. As was said by Phillips, "A particular average is a loss borne wholly by the party upon whose property it takes place, and is so called in distinction from a general average for which diverse parties contribute."[1] The Marine Insurance Act, 1906, describes a particular average loss as a "partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss."

Partial damage by sea water or fresh water or breakage or leakage or fire, when not caused by a general average act, are examples of particular average losses if the property is insured against such risks. Such losses, being the result of an accident and not of a sacrifice for the common benefit, fall in the first instance on the owner of the damaged goods. Losses of this nature are paid in full by the insurer under the transportation policy if they amount to 3 per cent or more of the value of each case or package. The purpose of limiting the underwriter's liability in this manner is to avoid the necessity of adjusting a large number of petty claims. The arrangement probably works to the advantage of both underwriter and assured, for the assured is enabled to obtain a lower rate by eliminating these small claims, and the underwriter avoids the expense of adjusting them.

35. Theft.

The risk of theft is covered whether the loss occurs on land or on the sea, but the insurer does not become liable for mere pilferage, *i.e.*, for the removal of goods from a case or package; for pilferage is expressly excluded.[2] In order to give rise to a claim under the

[1] Phillips, 5th ed. sec. 1422.

[2] Pilferage is a form of stealing, *Felgar v. Home Ins. Co.*, 207 Ill. App. 492 (1917), and is defined by some courts as petit larceny, *Hartford Ins.*

policy, the theft must be the taking of an entire shipping package. Generally speaking, theft as used in the policy is any wrongful taking of the insured property. Theft is the popular term for larceny; but it is broader than larceny, which is carefully defined in the criminal codes of the various states and strictly construed by the criminal courts. In Bouvier's Law Dictionary it is said that theft includes not only larceny but such other forms of wrongful taking as embezzlement and swindling.[1] The Court of Appeals of New York has held that larceny by a bailee or fiduciary, though embezzlement at common law, would be theft within the meaning of the policy. Theft, said the court, "is theft as common thought and common speech would now image and describe it."[2] It has been held that a person whose property has been converted by one to whom it was entrusted for sale or repair may recover from underwriters insuring against theft,[3] and that a conditional vendor is entitled to be paid for a loss by theft where the conditional vendee appropriated the property to his own use.[4] But statu-

Co. v. Wimbish, 12 Ga. App. 712, 78 S.E. 265 (1913); *Stuht v. Md. Ins. Co.*, 90 Wash. 576, 156 Pac. 557 (1916). As used in the transportation policy, it means filching, taking a small part rather than the whole, the abstraction of a part of the contents of a shipping package. *Tamarin v. Ins. Co. of North America*, 68 Pa. Sup. Ct. 614 (1918). As an exclusion, it includes "any theft from the package small or great where the package itself was not stolen." *Goldman v. Ins. Co. of North America*, 194 A. D. 266, 185 N.Y. Supp. 210 (1920), affd. 232 N.Y. 623, 134 N.E. 597.

[1] Bouvier, Vol. III, sec. 3267.

[2] *Van Vechten v. American Ins. Co.*, 239 N.Y. 303, 146 N.E. 432 (1925). See also *Bloom v. Ohio Farmers' Ins. Co.*, 255 Mass. 528, 152 N.E. 345 (1926); *Royal Ins. Co. v. Jack*, 113 Ohio St. 153, 148 N.E. 923 (1925); *Granger v. New Jersey Ins. Co.*, 291 Pac. (Calif.) 698 (1930).

[3] *Ludwig v. Pacific Ins. Co.*, 123 Misc. 189 (1924); *Miller v. Newark Fire Ins. Co.*, 12 La. App. 315, 120 So. 150 (1929).

[4] *Neal v. Liverpool Ins. Co.*, 178 A. D. 730, 165 N.Y. Supp. 204 (1917); but see *Delafield v. London & Lancashire Co.*, 177 A.D. 477, 164 N.Y.

tory larceny not amounting to theft is not covered.[1] As a general rule, it may be said that any loss which would be referred to in common parlance as a theft is covered by the policy.

36. Property and Risks Not Insured.

Although the transportation policy and endorsement A provide a wide coverage, there are a number of risks and certain kinds of property which the underwriters do not insure under this form. These risks and the kinds of property not insured are set forth as follows:

THIS POLICY DOES NOT INSURE

(*a*) Accounts, bills, currency, deeds, evidences of debt, money, notes, securities;

(*b*) Against loss by leakage, breakage, marring or scratching unless caused by fire, lightning, cyclone, tornado, flood, collision, derailment or overturning of vehicle while on land; or unless caused by the vessel, craft or lighter being stranded, sunk, burned or in collision while waterborne;

(*c*) Against loss or damage to goods by delay, wet or dampness, or by being spotted, discolored, mouldy, rusted, frosted, rotted, soured, steamed or changed in flavor, unless the same is the direct result of a peril insured against;

(*d*) Against loss or damage caused by strikers, locked-out workmen, or persons taking part in labor disturbances, or arising from riot, civil commotion, capture, seizure or detention, or from any attempt thereat, or the consequences thereof, or the direct or remote consequences of any hostility, arising from the acts of any government, people or persons whatsoever (ordinary piracy excepted), whether on account of any illicit or prohibited trade, or any trade in articles contraband of war, or the violation of any port regulation or otherwise. Also free from loss or damage resulting from measures or operations incident to war, whether before or after the declaration thereof;

Supp. 221 (1917), and *Siegel v. Union Assur. Soc.*, 90 Misc. 550, (153 N.Y. Supp. 662 (1915).

[1] *Van Vechten v. American Ins. Co.*, *supra*.

(*e*) Against loss or damage to merchandise shipped on deck of ocean-going steamers;

(*f*) Against loss or damage caused by the neglect of the Assured to use all reasonable means to save and preserve the property at and after any disaster insured against, or when the property is endangered by fire in neighboring premises;

(*g*) Shipments that have been either refused or are returned by the receiver thereof;

(*h*) Export or import shipments unless specifically stated herein;

(*i*) Risks by mail unless specifically stated herein.

These exceptions to the underwriter's liability resemble in some respects the conditions of the memorandum clause in the marine policy on cargo, but they include also one clause adapted from the fire policy and several clauses not to be found in either. Their purpose is to state clearly what the underwriter does not insure.

Clause *a* excludes a list of articles which are generally too valuable to be shipped as freight and hence should not be insured under the ordinary transportation policy. They are usually insured under the registered mail policy which is merely a special form of transportation policy. Clause *e* excludes deck cargoes, which are specialized risks and usually insured separately. Clause *g* excludes shipments refused or returned. This exclusion is inserted to avoid a two-way risk being given for a one-way premium. The provision is often deleted to meet special conditions. Clause *h* excludes export and import shipments because the inland transit as well as the ocean voyage of such shipments is generally insured under the warehouse to warehouse clause of the ocean policy. Shipments by mail are excluded by clause *i* because the insurers have a special parcel post policy for such goods.

The other clauses under this head list certain risks against which the policy does not provide insurance. Clause *b* excludes losses by leakage, breakage, marring or

scratching, unless such damage be caused by certain perils which are insured against. Thus disputes are avoided with respect to numerous small claims and with respect to damage to certain kinds of commodities which are easily subject to damage by ordinary handling in course of shipment. Clause *c*, like the memorandum clause in the marine policy, excludes losses due to delay, wet, or dampness, and to numerous other causes to which perishable goods are susceptible, unless the loss is a direct result of perils insured against. The insurer is not willing under this form of policy to insure against losses such as these, which may occur not because of any actual peril but merely because of the processes of nature. However, if the goods suffer any of the damages mentioned by reason of an insured peril, the loss may be recovered. Clause *d* is the war, strikes, and riots clause. Because of the tremendous destruction which may result from such activities, underwriters are unwilling to insure against them unless an additional premium is paid. Most underwriters have special printed forms of endorsement for such risks. Clause *f* is adapted from the fire policy and is designed to protect the underwriter from liability for fire damage caused by the assured's neglecting to attempt to save the goods when they are threatened by fire.

37. All Risks.

In addition to endorsements A, B, and C, to which reference has been made above,[1] other endorsements are frequently attached to the transportation policy. Perhaps the most important of these is the *all risks* endorsement. This rider often contains conditions and exclusions similar to those to be found in endorsements A, B, and C. However, instead of naming certain perils

[1] *Supra*, secs. 20–21 and note.

which the underwriter insures, the contract generally provides insurance against "all risks of loss or damage," or "all risks of physical loss or damage" "from any external cause," with certain exceptions. Then follows a list of exceptions similar to those discussed in sec. 36.

The term "all risks" as used in the policy is not to be taken too literally. Even when used without qualifying words, all risks have some limitations. When used in connection with marine insurance, they are said to mean "all marine risks."[1] Thus, "all risk of craft or boats" does not mean all risk of every kind while the goods are in craft or boats, but all risks peculiarly incidental to the carriage of goods in boats or craft;[2] and "all risks by land and by water" is intended to cover all losses by any accidental cause during the transit.[3]

Perhaps the best description of the coverage intended by the words "all risks" is to be found in *British and Foreign Marine Insurance Co. v. Gaunt.*[4] In that case the House of Lords held that the words, "all risks," do not cover all damage however caused, including such damage as is inevitable from ordinary wear and tear and unavoidable depreciation. Lord Sumner said:

> There are, of course, limits to "all risks." They are risks and risks insured against. Accordingly the expression does not cover inherent vice or mere wear and tear or British capture. It covers a risk, not a certainty; it is something, which happens to the subject

[1] *Vale v. Van Oppen*, 37 T.L.R. 367 (1921). In an early New York case, *Goix v. Knox*, 1 Johns. Cas. 337 (1800), it was held that "all risks" was intended to include all risks except such as arise from the fraud of the assured. See also *Yeaton v. Fry*, 5 Cranch 335, 3 L. ed. 117 (1809), *Parkhurst v. Gloucester Ins. Co.*, 100 Mass. 301 (1868), and *Marcy v. Sun Mutual Ins. Co.*, 11 La. Ann. 748 (1856), for further cases on the subject.

[2] *Schloss v. Stevens*, L.R. [1906] 2 K.B. 665.

[3] *Id.*, holding that "all risks by land and by water" included exposure to dampness due to abnormal delay in transit.

[4] L.R. 2 A.C. 41 (1921), holding the insurer liable for exceptional

matter from without, not the natural behavior of that subject matter, being what it is, in the circumstances under which it is carried. Nor is it a loss which the assured brings about by his own act, for then he has not merely exposed the goods to the chance of injury, he has injured them himself. Finally the description "all risks" does not alter the general law; only risks are covered which it is lawful to cover . . . .

A similar view has been expressed by the United States District Court for the Southern District of New York in *Mellon v. Federal Insurance Co.*[1] In that case the court said that even in an all risk policy there must be a fortuitous event, a casualty, in order to give rise to a claim against the insurer. However, the exact nature of the casualty need not be shown. It is sufficient, said the court in the Gaunt case, if the assured show that the loss was caused by "some event covered by the general expression." He need not show the precise circumstances of the accident or casualty.

The use of the words "physical" and "from any external cause" is designed to avoid disputes on such points as were discussed in the cases cited above. Thus "all risks of physical loss or damage from any external cause" avoids by its own terms the claim that the underwriter is liable for inherent vice, wear and tear, delay, and so forth.

38. Other Endorsements.

There is of course no limit to the different kinds of endorsements which may be attached to the policy. Some companies have printed forms of those most frequently used, but in many instances a type-written form is necessary where the endorsement is the product of negotiation between underwriter and assured, or is

[1] 14 Fed. (2nd) 997 (1926). In the course of its opinion the court said that "other causes of whatsoever nature" meant the same as "all risks."

designed to cover the special needs of the assured. These forms are used principally to insure merchandise purchased by department stores, goods temporarily in public warehouses, and property shipped by manufacturers and jobbers.

39. Summary.

The more important provisions of the common form of transportation policy have now been discussed. Mention has been made of the agreement of the parties with respect to premiums, the term of the policy, the property insured, its value, the payment of losses, the extent of the coverage, the risks insured, and those not insured. If the policy were to end with the clauses reviewed above, it probably would be held to be a complete contract of insurance. However, in order to reduce the possibility of disputes between the parties to a minimum, a number of general conditions have been inserted in the policy. These additional stipulations will be discussed in the succeeding chapter.

CHAPTER III

TRANSPORTATION POLICY CLAUSES

40. General Clauses.

Transportation policies usually contain a number of stipulations of a general nature in addition to those already discussed. These stipulations, or conditions as they are often called, are made a part of the policy, and unless deleted or modified by stamped or typewritten provisions or by the attachment of riders or endorsements, are effective as part of the contract of insurance. One of the first of these clauses usually refers to the territorial limits within which the policy is effective.

41. Territorial Limits.

In many policies, especially those covering marine risks, the assured warrants that the insured property will not be taken beyond certain specified limits. Inland waters where navigation is difficult or northern ports where ice is to be found in winter are often excluded entirely or during certain periods of the year, and other limitations are frequently imposed for other reasons. Whenever the assured agrees that the insured property will be covered only while it is within a certain area or that it will not enter certain territory, he is bound to a strict observance of the agreement.

The clause as it often appears in the transportation policy provides, "This policy covers only within the limits of the United States and Canada." This condition must be considered in connection with the typewritten

insertion usually made after "in transit at and from," which was discussed in section 19. If the places described after the words "in transit at and from" are within the United States and Canada, there is of course no inconsistency between the two provisions; but if the described limits are elsewhere, the typewritten insertion prevails. Whatever the agreement may be, it is in the nature of a warranty. It sets the territorial limits within which the insurer agrees to insure the goods. If the assured ships goods beyond those limits, his insurance ceases from the moment his property passes out of the specified territory, whether or not the passing out contributes to a loss.[1]

42. Other or Double Insurance.

The stipulation with respect to other or double insurance is often as follows:

> It is expressly agreed that this insurance shall not cover to the extent of any other insurance whether prior or subsequent hereto in date, and by whomsoever effected, directly or indirectly covering the same property, and this Company shall be liable for loss or damage only for the excess value beyond the amount of such other insurance.

Clauses with respect to other or double insurance have caused much difficulty to underwriters and assured in all branches of insurance, and have resulted in many conflicting decisions. Some policies provide that the insurance shall be void if there is other insurance covering the loss while some, notably fire policies, provide for a pro-rata contribution from underwriters, and still others merely limit the insurer's liability to the excess of loss

[1] *Cogswell v. Chubb*, 1 A.D. 93, 36 N.Y. Supp. 1076, affd. 157 N.Y. 709, 53 N.E. 1124 (1896); *Hastorf v. Greenwich Ins. Co.*, 132 Fed. 122 (1904).

over that covered by the other insurance.[1] In New York it is definitely established that a clause to the effect that the policy will be void if there is other insurance covering the loss makes the policy void from the moment the other policy is issued insuring the same interest, whether the other insurance be valid or invalid.[2] In some states, Massachusetts, Maryland and Iowa for example, a policy containing such an other insurance clause is said to be avoided only if the second policy is

[1] Sometimes the policy is written to cover only losses not covered by specific insurance. It has been said that "a policy which singles out for particular insurance a certain article, or property of a restricted class, falling within the general description contained in a blanket policy covering all of the property of the insured as to the same risk, or a policy which, although its coverage taken as a whole is general in its terms, by certain provisions selects and affords discriminating protection to a certain article or specified items of property regarding a particular risk . . . against which the blanket policy protects all of the property of the insured, is to be regarded as specifically insuring the article or property so designated and specially protected." *Hartford Steam Boiler Co. v. Firemen's Ins. Co.*, 110 Conn. 332, 337, 148 Atl. 135 (1930) and cases cited there. Thus insurance on a particular diamond is to be regarded as specific insurance with a policy on precious stones generally, *Lowder v. Traveler's Indemnity Co.*, 115 Kan. 852, 224 Pac. 918 (1924); insurance on cotton in a particular warehouse is specific insurance with a policy on cotton in stores, presses, warehouses, sheds, yards, and wharves, *United Underwriters Ins. Co. v. Powell*, 94 Ga. 359, 21 S.E. 565 (1894); *Macon Ins. Co. v. Powell*, 116 Ga. 703, 43 S.E. 73 (1902); a policy insuring specified goods or goods in specified places is specific insurance with a floating policy covering goods which fluctuate both in location and in amount, *Fairchild v. L. & L. & G. Ins. Co.*, 51 N.Y. 65 (1872); *Klotz v. Eastern Ins. Co.* 116 A.D. 723, 102 N.Y. Supp. 82 (1907); and an open marine or "blanket" policy on cargo under which declarations are made for each cargo shipped is "specific insurance" with a floating policy, *Peabody v. Liverpool Ins. Co.*, 171 Mass. 114, 50 N.E. 526 (1898). For further cases see *Wilson v. Hartford Fire Ins. Co.*, 300 Mo. 1, 254 S.W. 266 (1923). As to "other similar insurance," see *Kanawha Investment Co. v. Hartford Ins. Co.*, 107 W. Va. 555, 149 S.E. 605 (1929).

[2] *Suetterlein v. Northern Ins. Co.*, 251 N.Y. 72, 167 N.E. 176 (1929); *Bigler v. N.Y. Cent. Ins. Co.*, 22 N.Y. 402 (1860); *Lipedes v. Liverpool Ins. Co.*, 229 N.Y. 201, 128 N.E. 160 (1920).

valid. If it is invalid, these courts hold that there is no breach.[1] Difficulties on this point are often avoided by making the policy void if other insurance is effected whether the second policy be valid or invalid.

Questions frequently arise as to what constitutes other insurance. The general rule is that in order to have other or double insurance there must be two or more policies made in favor of the same assured, with his knowledge and consent, on the same interest, against the same, or at least against similar, risks.[2] "If the coverage," said Judge Cardozo, in *Suetterlein v. Northern Insurance Co.*,[3] "of one policy is an interest wholly separate, in substance as well as in form, from the coverage of the second, there is no 'other insurance' within the scope of the condition." In other words, if insurance is procured by other parties having an insurable interest in the property, there is no breach of the condition against double insurance on the part of the assured. Thus it has been held that if a mortgagee obtains insurance on his interest without the knowledge or consent of the mortgagor,[4] or if a building contractor insures without

[1] *Thomas v. Builders Mutual Ins. Co.*, 119 Mass. 121 (1875); *Sweeting v. Mutual Fire Ins. Co.*, 83 Md. 63, 34 Atl. 826 (1896); *Hubbard v. Hartford Fire Ins. Co.*, 33 Iowa 325 (1871). In *Turner v. Meridan Fire Ins. Co.*, 16 Fed. 454 (1883) the cases on both sides of this question were collected.

[2] Phillips, 5th ed. sec. 359; *Handleman v. U.S. Fidelity Co.*, 18 S.W. (2nd) 532 (Mo.) (1929); *Home Ins. Co. v. Gwathmey*, 82 Va. 923, 1 S.E. 209 (1887); *Turk v. Newark Fire Ins. Co.*, 4 Fed. (2d) 142, affd. 6 Fed. (2nd) 533 (1925); *Richards*, 4th ed. p. 458; 14 R.C.L. 1310; *Sloat v. Royal Ins. Co.*, 49 Pa. 14 (1865); *Meigs v. Ins. Co. of North America*, 205 Pa. 378, 54 Atl. 1053 (1903).

[3] *Suetterlein v. Northern Ins. Co.*, 251 N.Y. 72, 167 N.E. 176 (1929).

[4] *DeWitt v. Agricultural Ins. Co.*, 157 N.Y. 353, 51 N.E. 977 (1898); *Church v. Sun Fire Office*, 54 Minn. 162, 55 N.W. 909 (1893); *Commonwealth Ins. Co. v. Evans*, 42 S.W. (2nd) 1088 (Tex.) (1931). It is common practice for an assured under a fire policy to insure the mortgagee's interest by the mortgagee clause.

the owner's knowledge,[1] or an automobile financing company secures additional insurance without the buyer's knowledge,[2] or an unauthorized broker procures additional insurance,[3] the policy provisions with respect to other insurance do not ordinarily become operative, because such insurance is not "other insurance." It has been held also that a policy covering a carrier's legal liability is not other insurance with a tower's risk policy,[4] and that where the assured himself inadvertently covered the same property by two policies, the second is not other insurance with the first.[5] But one insurance against theft and another against burglary, both obtained by the same party on the same property, would seem to be double insurance.[6]

The transportation policy clause does not ordinarily provide for forfeiture or contribution because other insurance is placed on the goods. Under the clause quoted above, the effect of taking other insurance is to make the transportation policy insure only the excess over the other policy's coverage. It was so held in *Gutner v. Switzerland General Insurance Co.*,[7] where the clause was held to be a valid limitation of the underwriter's liability. What would have been the result if the assured had sued both insurers in one action (each policy containing a similar other insurance clause) was

[1] *Automobile Ins. Co. v. Teague*, 37 S.W. (2nd) 151 (Tex.) (1931).

[2] *Glens Falls Ins. Co. v. Jacobs*, 227 Ky. 741, 13 S.W. (2nd) 1040 (1929).

[3] *Gough v. Ins. Co., of North America*, 157 Tenn. 546, 11 S.W. (2nd) 887 (1928); *American Eagle Fire Ins. Co. v. Vaughan*, 35 Fed. (2nd) 147 (1929); *Svetlicic v. Farmers' Alliance Co.*, 136 Kan. 551, 16 Pac. (2nd) 956 (1932).

[4] *Marine Transit Corp. v. Ins. Companies*, 2 Fed. Supp. 489, 1933 A.M.C. 350, affd. 67 Fed. (2nd) 544, 1933 A.M.C. 1631.

[5] *Mead v. American Fire Ins. Co.*, 13 A.D. 476, 43 N.Y. Supp. 334 (1897).

[6] *Handleman v. U.S. Fidelity Co.*, 18 S.W. (2nd) 532 (Mo.) (1929).

[7] 32 Fed. (2nd) 700 (1929); see *Handleman v. Fidelity Co., supra.*

not decided. Perhaps both would have been required to contribute, as in the case of double insurers where the policies contain no provisions with respect to other insurance.[1] Nor was it decided what the result would have been if the other insurance had been effected by someone besides the plaintiff, or if it had "*indirectly* covered the same property."

43. Misrepresentation and Fraud.

Practically all insurance policies provide in some manner for a forfeiture in case of fraud or misrepresentation by the assured. The clause appearing in many transportation policies is as follows:

> This entire policy shall be void if the Assured or his Agent has concealed or misrepresented in writing, or otherwise, any material facts or circumstances concerning this insurance or the subject thereof, or if the Assured or his Agent shall make any attempt to defraud this Company either before or after a loss.

This clause is little more than a statement of the law applicable where the assured has concealed or misrepresented material facts in applying for insurance, or has sought to defraud the insurer. The rule with respect to concealment and misrepresentation has been strictly enforced in connection with marine insurance policies, where perhaps more than anywhere else the insurer is required to rely on the good faith of the assured in disclosing true and complete information with respect to the risk. Indeed the rule is so absolute that it matters not whether the concealment or misrepresentation of material facts be intentional or unintentional, innocent

[1] *Home Ins. Co. v. Baltimore Warehouse Co.*, 93 U.S. 527, 546 23 L. ed. 868 (1876); *American Ins. Co. v. Griswold*, 14 Wend. 399, 461 (1835); *Ryder v. Phoenix Ins. Co.*, 98 Mass. 185 (1867); *McAllister v. Hoadley*, 76 Fed. 1000 (1896); Joyce, *A Treatise on the Law of Insurance*, 2nd ed. sec. 2489.

or fraudulent. If the concealment or misrepresentation be such that if the facts had been disclosed a prudent underwriter would not have accepted the risk, or would have required a higher rate, liability may be avoided by the insurer.[1]

There is conflict among the authorities as to the application of this rule to fire, life, and casualty policies, some courts holding that the concealment or misrepresentation of material facts must be intentional in order to enable the insurer to avoid the policy, and others that it makes no difference whether it be intentional or unintentional. Richards says with respect to such policies that it is generally held that the concealment of a material fact, when not made the subject of express inquiry by the insurer, must be intentional in order to avoid the policy.[2] It remains to be seen whether the strict interpretation given to marine policies or the more liberal interpretation sometimes given to other forms of insurance will be applied to transportation policies.[3]

[1] *Sun Mutual Ins. Co. v. Ocean Ins. Co.*, 107 U.S. 485, 510, 27 L. ed. 337 (1882); *Bella S.S. Co. v. Ins. Co. of North America*, 290 Fed. 992, 1923 A.M.C. 769, affd. 5 Fed. (2nd) 570, 1925 A.M.C. 751; *Wathen v. Public Fire Ins. Co.*, 61 Fed. (2nd) 962 (1932).

[2] Richards, 4th ed. p. 130. Some states now have statutes on this subject.

[3] In a recent case on a surety company bond, where it was contended that "the modern rule as to nondisclosure relaxes the rigor of the strict doctrines of marine insurance," the court said: "The validity of this generalization must be tested in the light of the rationale of the cases which support it and its applicability here on a careful analysis of the facts of the present controversy." *Hare v. Nat. Surety Co.*, 49 Fed. (2nd) 447, 454 (1931). In affirming the District Court's decision the Circuit Court of Appeals held that though the rule had been relaxed as to fire and life policies, it still applies not only to marine policies but to other types of insurance where the applicant may not honestly consider himself discharged from the duty of affirmative disclosure of matters concerning which he has not been interrogated. 60 Fed. (2nd) 909 (1932).

With respect to fraud, however, there is no such conflict in the decisions. The clause quoted above provides for a forfeiture if the assured or his agent shall attempt to defraud the insurer either before or after a loss. Fraud has been said to be the making of a false representation with intent to mislead,[1] or any trick or device perpetrated on the company in proofs of loss or otherwise.[2] If the assured makes such a representation, or by trick or device induces the underwriter to issue a policy, the latter may rescind the contract or deny liability for any loss that may have occurred.[3] Likewise if there be fraud after a loss, as in the making of proofs of loss, the assured will be held to have forfeited any right to recover under the policy.[4] Thus where the assured altered the invoices of certain goods in an attempt to show that they had been received by him and were on the premises at the time of the fire, he was not allowed to recover;[5] and where it was shown that at the time of the fire the assured's premises did not contain anywhere near the amount of lumber sworn to be there, a jury's verdict in favor of the insured was reversed.[6] The same result was reached where the plaintiff wilfully made false statements of the value of the goods destroyed.[7] But

[1] *Gen. Accident Corp. v. Industrial Accident Com.*, 196 Calif. 179, 237 Pac. 33 (1925).

[2] *Maher v. Hibernia Ins. Co.*, 67 N.Y. 283, 292 (1876).

[3] *Hoyt. v. Gilman*, 8 Mass. 336 (1811); *Vale v. Phoenix Ins. Co.*, 1 Wash. C.C. 283, 28 Fed. Cas. No. 16811 (1805); *General Accident Corp. v. Industrial Accident Com., supra.*

[4] *Claflin v. Commonwealth Ins. Co.*, 110 U.S. 81, 28 L. ed. 76 (1883); *Studer v. Hudson Ins. Co.*, 179 Minn. 289, 229 N.W. 88 (1930).

[5] *Virginia Fire and Marine Ins. Co. v. Vaughan*, 88 Va. 832, 14 S.E. 754 (1892).

[6] *Wunderlich v. Palatine Fire Ins. Co.*, 104 Wis. 382, 80 N.W. 467 (1899).

[7] *Columbian Ins. Co. v. Modern Laundry*, 277 Fed. 355 (1921).

false statements in the proofs of loss will not vitiate the policy unless intentionally made.[1]

44. The Machinery Clause.

The *machinery clause* provides that in case of loss of or injury to any part of a machine consisting, when complete for sale or use, of several parts, the insurers will be liable only for the insured value of the part lost or damaged. In many cases the loss or breakage of one part of a machine renders the whole machine useless. As underwriters do not wish to become liable for the value of the whole machine or the owner's loss of the use of the property when only a part of it has been lost or damaged, they have inserted this provision for their own protection. The clause is a valid limitation of the underwriter's liability.

45. Labels.

The *label clause* is similar in principle to the machinery clause. It provides that in case of a loss affecting labels, capsules, or wrappers, the underwriters will pay for the cost of new labels, capsules, or wrappers and reconditioning the goods. Cases often arise where commodities, such as canned goods, come in contact with water so that the labels are destroyed or injured, giving the cans so poor an appearance as to render them unsalable, although the contents are undamaged. This clause is used to avoid liability for the value of the goods.

46. Benefit of Insurance.

The *bailee clause*, which restricts the benefit of the insurance to the policy holder, reads as follows:

[1] *Post v. American Cent. Ins. Co.*, 51 Pa. Sup. Ct. 352 (1912); *Mississippi Ins. Co. v. Dixon*, 133 Miss. 570, 98 So. 101 (1923); *Hartford Ins. Co. v. Cincinnati Co.*, 9 Ohio App. 403 (1918); *Titus v. Glens Falls Ins. Co.*, 81 N.Y. 410 (1880).

Warranted by the assured that this insurance shall not enure directly or indirectly to the benefit of any carrier, bailee or other party, by stipulation in bill of lading or otherwise, and any breach of this warranty shall render this policy of insurance null and void.

Common carriers, especially ocean carriers, in attempting to limit or avoid liability for damage to goods entrusted to their care, have for many years inserted in their bills of lading stipulations by which they have sought to obtain the benefit of the cargo owner's insurance. This was generally accomplished by a clause stating that "the carrier shall have the benefit of any insurance effected on the goods," or some similar clause. Such agreements were held valid by the Supreme Court.[1] The result was that the insurer, after paying the shipper or consignee for his loss, was unable to enforce his right of subrogation against the carrier.[2] In order to overcome this difficulty the bailee clause was inserted in the policy, and when a loss occurred, the insurer, instead of *paying* the shipper for his loss, *lent* him the money under an agreement that it would be repaid out of the recovery made by the shipper or consignee from the carrier. This arrangement was held valid in *Luckenbach v. McCahan Sugar Co.*[3]

[1] *Phoenix Ins. Co. v. Erie & Western Co.*, 117 U.S. 312; 6 Sup. Ct. Rep. 750, 29 L. ed. 873 (1886); *Wager v. Providence Ins. Co.*, 150 U.S. 99, 14 Sup. Ct. Rep. 55, 37 L. ed. 1013 (1893); *Luckenbach v. McCahan Sugar Co.*, 248 U.S. 139, 139 Sup. Ct. Rep. 53, 63 L. ed. 170 (1918). The question whether a carrier by rail could enforce a benefit of insurance clause was considered in *China Fire Ins. Co. v. Davis*, 50 Fed. (2nd) 389, 1931 A.M.C. 1174, and it was held that the rail carrier could not enforce the clause in the bill of lading because it amounted to a discrimination in violation of the Interstate Commerce Act.

[2] *Fayerweather v. Phenix Ins. Co.*, 118 N.Y. 324, 23 N.E. 192 (1890); *Wager v. Providence Ins. Co.*, 150 U.S. 99, 108, 14 Sup. Ct. Rep. 55, 37 L. ed. 1013 (1893).

[3] 248 U.S. 139, 39 Sup. Ct. Rep. 53, 63 L. ed. 170 (1918).

In an attempt to avoid the effect of this decision, one of the steamship companies altered its bills of lading to read, "The carrier shall be entitled to the benefit of any insurance on the goods and to any payments made by or on behalf of the insurers thereof whether under the guise of advances, loans, or otherwise." A case involving this clause came before the Circuit Court of Appeals for the Second Circuit in *The Turret Crown*.[1] The insurance policies issued to the cargo owners, who were the nominal libellants, contained stipulations that the insurers should be discharged from any liability in case the goods were carried under a bill of lading in which the carrier stipulated for the benefit of the shipper's insurance. The court said that the bill of lading stipulation would have the effect of requiring the shipper either to take out insurance which would benefit the carrier, or to go without insurance, and pointed out that the carrier was attempting to do indirectly what it would not be permitted to do directly. "That kind of stipulation the carrier cannot insist on," said the court.

The result of this series of decisions is that if the policy contains a bailee clause, and money is advanced by the underwriter to the assured as a loan, the insurer's right of subrogation is preserved. While the taking of a formal loan receipt seems desirable as evidence that a loan was made, the insurer may bring himself within the rule if, in advancing money to the assured, it was intended to be lent rather than paid.[2]

[1] 297 Fed. 766, 1924 A.M.C. 253. This decision has been followed by *The Mursa*, 1925 A.M.C. 1541; *The G. F. Brady*, 1927 A.M.C. 1621; *The Archer*, 1928 A.M.C. 1615, affd. 41 Fed. (2nd) 1010; *Sorenson v. Boston Ins. Co.*, 1927 A.M.C. 1288; *The J. L. Luckenbach*, 1 Fed. Supp. 692, 1933 A.M.C. 105, affd. 65 Fed. (2nd) 570, 1933 A.M.C. 980.

[2] *Turret Crown*, 297 Fed. 766, 779, 1924 A.M.C. 253.

47. Notice of Loss.

Practically all insurance policies require that *notice of loss* be given to the insurer and that sworn *proofs of loss* be filed within some definite period, as conditions precedent to recovery under the policy. Sometimes it is required that notice of loss be given "at once," "forthwith," "promptly," "as soon as possible," or "immediately." The clause used in many transportation policies is as follows:

> Every claim for a loss under this policy shall be immediately reported in writing with full particulars to the ... ... INSURANCE COMPANY or to the Agent of the Company issuing this policy, and a detailed sworn proof of loss shall be filed with the Company or its said agent within four months of the date of the loss. A failure by the Assured to file either such claim or such proof shall invalidate the claim. All adjusted claims shall be due and payable thirty days after the presentation and acceptance of proofs of loss at the office of this Company.

The stipulation with respect to notice does not mean that the assured must give notice of the loss on the day it happens. It really means no more than that he must give notice within a reasonable time.[1] As was stated in an early New York case, with respect to a policy requiring notice forthwith, "It has always been held that due diligence under all the circumstances was all that was required."[2] But due diligence to act with reasonable promptness must be exercised;[3] and unless some plausible excuse is given, the assured will not be allowed to recover

[1] *Solomon v. Cont. Fire Ins. Co.*, 160 N.Y. 595, 55 N.E. 279 (1899); *Feder v. Midland Casualty Co.*, 316 Ill. 552, 147 N.E. 468 (1925); *Cady v. Fidelity & Casualty Co.*, 134 Wis. 322, 113 N.W. 967 (1908); *Curran v. Nat. Life Ins. Co.*, 251 Pa. 420, 96 Atl. 1041 (1916).

[2] *N. Y. Cent. Co. v. Nat. Protection Ins. Co.*, 20 Barb. 468 (1854).

[3] *Friedman v. Orient Ins. Co.*, 278 Mass. 596, 180 N.E. 617 (1932).

if he delays in giving notice of loss.[1] Furthermore, the notice must be in writing as agreed. Oral notice is not a compliance with the clause.[2]

Thus where a delay of over two years in giving notice was due to the fact that the assured died before the loss occurred, and the appointment of an executor was delayed by a contest over the will, the court held the delay unreasonable because no steps had been taken for the appointment of an administrator by the parties interested in the estate.[3] Where the assured gave notice to the wrong insurance company and did not discover his error until 26 days after the accident, when notice was given to the actual insurer, the court said that this was not a sufficient excuse for failing to give immediate notice.[4] The courts have refused also to excuse a delay of 26 days which occurred merely because the assured was harassed by a strike among his employees and forgot to send the notice.[5] In another case, a delay of nine months, allowed to occur because the assured thought that the accident would not give rise to a loss, was held too long.[6]

[1] *Rushing v. Commercial Casualty Ins. Co.*, 251 N.Y. 302, 167 N.E. 450 (1929), where the notice was given 22 days after the loss. *Boston Elevated Ry. Co. v. Maryland Casualty Co.*, 232 Mass. 246, 122 N.E. 196 (1919); *Edelson v. American Ins. Co.*, 92 Pa. Sup. Ct. 90 (1927); *Haas Tobacco Co. v. American Fidelity Co.*, 226 N.Y. 343, 123 N.E. 755 (1919), where there was a delay of 10 days; *St. Louis Co. v. New Amsterdam Casualty Co.*, 40 Fed. (2nd) 344 (1930).

[2] *Farrell v. Merchants' Ins. Co.*, 203 A.D. 118, 196 N.Y. Supp. 383 (1922).

[3] *Matthews v. American Cent. Ins. Co.*, 154 N.Y. 449, 48 N.E. 751 (1897).

[4] *Reina v. U.S. Casualty Co.*, 228 A.D. 108, 239 N.Y. Supp. 196, affd. 256 N.Y. 537, 177 N.E. 130 (1931). See *Jefferson Realty Co. v. Empire Liability Corp.* 149 Ky. 741, 149 S.W. 1011 (1912), where the error that the wrong company had been notified was not discovered for 10 months.

[5] *Smith v. Travelers' Ins. Co.*, 171 Mass. 357, 50 N.E. 516 (1898).

[6] *Travelers' Ins. Co. v. Myers*, 62 Ohio 529, 57 N.E. 458 (1900).

On the other hand, where an assured residing in New York owned goods which were destroyed by fire in San Francisco, but the confusion was so great that he was unable to find out what property had been destroyed, and the underwriter was aware that a loss had occurred, notice given 60 days after the fire was held to be sufficient.[1] In another case an assignee for the benefit of creditors had no knowledge of the contents of the policy, and although he sought deligently for the policy and tried to discover its terms, he was not successful until 50 days after the fire. He gave notice within three days after he learned that notice was necessary, and the notice was held to have been given in time.[2] In still another case the assured was away from home, and on receiving word from his wife that a theft had occurred, directed her to notify the insurer. Although the notice was received 16 days after the loss, it was held that there was a compliance with the notice clause.[3] And where a receiver failed to obtain all the policies, due to the mistake of a clerk, a 12-day delay was held not unreasonable.[4]

In most cases the issue as to whether the notice has been given within a reasonable time is a question of fact for the jury.[5]

[1] *Well & Baumer Co. v. Rochester German Ins. Co.*, 140 A.D. 691, 125 N.Y. Supp. 606 (1910).

[2] *Solomon v. Cont. Fire Ins. Co.*, 160 N.Y. 595, 55 N.E. 279 (1899).

[3] *Orlando v. Great Eastern Casualty Co.*, 155 N.Y. Supp. 20, 91 Misc. 539 (1915).

[4] *Greenwich Bank v. Hartford Fire Ins. Co.*, 250 N.Y. 116, 164 N.E. 876 (1928). A week's delay in notifying insurer and police was held not unreasonable under a theft policy, where the assured made an intensive search during that week for the lost article, *Nixon v. Indemnity Ins. Co.*, 3 Pac. (2nd) 968 (1931).

[5] *Well & Baumer Co. v. Rochester German Ins. Co.*, 140 A.D. 691, 125 N.Y. Supp. 606 (1910); *Mewborn v. Employer's Liability Corp.*, 198 N.C. 156 150 S.E. 887 (1929).

48. Proofs of Loss.

It is not enough that the assured shall give immediate notice of a loss. The policy requires also that "a detailed sworn proof of loss shall be filed with the company or its agent within four months of the date of loss." This is a valid condition of the policy,[1] and compliance with it is a condition precedent to recovery.[2]

The purpose of the clause is to enable the insurer to learn the extent of the assured's loss and the facts which may render the company liable and make possible a recovery against third parties—information that is not required and perhaps is not available at the time of giving notice that a loss has occurred. According to the customary practice, the underwriter on receiving notice of a loss sends to the assured a printed form which, when completely filled out, should supply the information required.[3] It is not necessary that this form be used, but substantial compliance with the policy clause is required. Failure reasonably to comply with that clause will defeat recovery.[4]

There is some conflict among the decisions as to whether a failure to file proofs of loss within the required time is fatal, or will be excused under some circumstances. The better view seems to be that strict compliance with respect to time is required, unless it is waived by the

[1] Joyce, 2nd ed. sec. 3280.

[2] *Slocum v. Saratoga Fire Ins. Co.*, 149 A.D. 867, 134 N.Y. Supp. 72 (1912); *Perry v. Caledonian Ins. Co.*, 103 A.D. 113, 93 N.Y. Supp. 50 (1905); *White v. Home Mutual Ins. Co.*, 128 Calif. 131, 60 Pac. 666 (1900); *Hanover Fire Ins. Co. v. Johnson*, 26 Ind. App. 122, 57 N.E. 277 (1900); *Maddox v. Insurance Co.*, 56 Mo. App. 343 (1893).

[3] It has been held that a refusal to supply forms of proof of loss is a waiver of proof of loss. *Jenness v. Fidelity Union Fire Ins. Co.*, 175 La. 923, 144 So. 716 (1932).

[4] *Globe & Rutgers Ins. Co. v. Prairie Oil Co.*, 248 Fed. 452 (1917), *Glazer v. Home Ins. Co.*, 190 N.Y. 6, 82 N.E. 727 (1907).

insurer;[1] but some courts have refused on one pretext or another to enforce the stipulation regarding time, when extenuating circumstances are shown.[2]

The Court of Appeals of New York, where a strict compliance is required, has held that depositing proofs of loss in the mails on the last day of the period for filing the proofs, so that they did not reach the underwriters until two days later, was not a compliance with the clause;[3] but in a case of damage by fire, the same court held that time did not begin to run until the fire had terminated or abated to such an extent that an inspection of the damaged property was possible.[4]

The clauses with respect to notice and proofs of loss, like all the other stipulations of the policy, may be waived by the insurer; and since they are sometimes regarded as technical defenses, the courts are keen to find circumstances which indicate a waiver, such for example as acceptance and retention of the proofs of loss without objection,[5] or failure to furnish on request[6] blanks for

[1] *White v. Home Mutual Ins. Co.*, 128 Calif. 131, 60 Pac. 666 (1900); *Bank v. Hartford Fire Ins. Co.*, 1 Fed. (2nd) 43 (1924); *Peck v. Nat. Liberty Ins. Co.*, 224 Mich. 385, 194 N.W. 973 (1923); *Folds v. Firemen's Fund Ins. Co.*, 28 Ga. App. 323, 110 S.E. 925 (1922); *Fliashnick v. Mass. Bonding and Ins. Co.*, 199 N.Y. Supp. 187 (1923); *Martin v. Ill. Commercial Assn.*, 195 Ill. App. 421 (1915).

[2] *Hartford Fire Ins. Co. v. Redding*, 47 Fla. 228, 37 So. 62 (1904); *Kenton Ins. Co. v. Downs*, 90 Ky. 236, 13 S.W. 882 (1890); *Franklin Fire Ins. Co. v. Orr*, 36 S.W. (2nd) 576 (1931); *Livingstone v. Boston Ins. Co.*, 255 Pa. 1 (1916); *Hirsch-Fauth Co. v. Cont. Ins. Co.*, 24 Fed. (2nd) 216 (1928), distinguishing *Bank v. Ins. Co., supra.*

[3] *Peabody v. Satterlee*, 166 N.Y. 174, 59 N.E. 818 (1901).

[4] *Nat. Wall Paper Co. v. Assoc. Fire Ins. Corp.*, 175 N.Y. 226, 67 N.E. 440 (1903). See also *Niagara Fire Ins. Co. v. Raleigh Hardware Co.*, 62 Fed. (2nd) 705 (1933).

[5] *Glazer v. Home Ins. Co.*, 190 N.Y. 6, 82 N.E. 727 (1907); *Miglier v. Phoenix Ins. Co.*, 169 N.Y. Supp. 45, 102 Misc. 461 (1918); *Ins. Co. of North America v. Hope*, 58 Ill. 75 (1871).

[6] *Simmons v. Western Indemnity Co.*, 210 S.W. 713 (Tex.) (1919).

proof of loss. Whether a waiver exists is said to be a question of fact for the jury.[1]

48*a*. *Payment of Loss.*—The clause providing that "all adjusted claims shall be due and payable thirty days after the presentation and acceptance of proofs of loss at the office of this company" is inserted for the purpose of permitting the company a reasonable time to investigate the loss and to decide whether the company is liable. As payment is not required until 30 days after presentation and acceptance of the proofs of loss, the insurer cannot be sued until that time has elapsed.[2]

49. Sue and Labor.

The *sue and labor clause* usually appearing in transportation policies reads as follows:

> In case of loss or damage it shall be lawful and necessary for the Assured, their factors, servants or assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the property insured hereunder, or any part thereof, without prejudice to this insurance; nor shall the acts of the Assured or this Company in recovering, saving and preserving the property insured in case of loss or damage, be considered a waiver or acceptance of an abandonment; to the charges whereof, this Company will contribute according to the rate and quantity of the sum herein insured.

This clause has been taken almost verbatim from the marine policy on cargo, of which it is an important feature. The purpose of the stipulation as used in the marine policy is to encourage the assured to make an effort to save the property for the benefit of the insurer and to prevent a further loss if possible.[3] The clause permits the assured under a marine policy to sue, labor,

[1] *Glazer v. Ins. Co.* and *Miglier v. Ins. Co.*, *supra*.

[2] *Clover v. Greenwich Ins. Co.*, 101 N.Y. 277, 4 N.E. 724 (1886).

[3] *Gilchrist Trans. Co. v. Worthington & Sill*, 193 A.D. 250, 184 N.Y. Supp. 81 (1920); *Aitchison v. Lohre*, L.R. 4 A.C. 755, 765 (1879).

and travel without waiving his right to tender abandonment and claim a total loss.[1] This provision is in reality a separate contract, an agreement outside the contract of indemnity, by which the insurer agrees in case of loss to pay the expenses which the assured may incur in preventing a further loss which, if incurred, would fall on the underwriter.[2] The insurer therefore may be held liable for sue and labor expenses in addition to paying for a total loss.[3] Although by its terms the clause would seem not to come into operation until loss or damage has occurred,[4] it has been held to permit a recovery of expenses incurred to prevent a threatened loss, though no actual loss had been suffered.[5] However, in order to entitle the assured to a recovery, the suing and laboring must be done in order to prevent a loss insured against. Otherwise the assured will have no claim under the sue and labor clause.[6]

The specific expenses which, it has been held, the assured may recover under the sue and labor clause include the ordinary expenses of litigation, such as counsel fees, marshal's fees, the cost of giving security,

[1] *American Marine Ins. Co. v. Liberty S. & G. Co.*, 282 Fed. 514 (1922); *Soelberg v. Western Assurance Co.*, 119 Fed. 23 (1902); *Washburn v. Reliance Marine Ins. Co.*, 179 U.S. 1, 18, 21 Sup. Ct. Rep. 1, 45 L. ed. 49, (1900). As the right to tender abandonment is peculiar to marine insurance it is questionable whether an abandonment can be made under the transportation policy.

[2] *Gilchrist Trans. Co. v. Worthington & Sill*, 193 A.D. 250, 184 N.Y. Supp. 81 (1920); *Alexandre v. Sun Mutual Ins. Co.*, 51 N.Y. 253 (1873); *American Marine Ins. Co. v. Liberty S. & G. Co.*, 282 Fed. 514 (1922); *Richards*, 4th ed. p. 821.

[3] *American v. Liberty, supra;* Phillips, 5th ed. sec. 1742; *Lohre v. Aitchison*, 2 Q.B.D. 502, 3 Q.B.D. 558, 566, 4 App. Cas. 755 (1877).

[4] *Xenos v. Fox*, L.R. 4 C.P. 665 (1869).

[5] *St. Paul Fire Ins. Co. v. Pacific Storage Co.*, 157 Fed. 625 (1907); *The Pomeranian*, L.R. [1895] P.D. 349; *Kidston v. Empire Marine Ins. Co.*, L.R. 2 C.P. 357 (1867).

[6] *Biays v. Chesapeake Ins. Co.*, 7 Cranch 415, 3 L. ed. 389 (1813).

the expense of traveling and attending a trial,[1] the cost of unloading the insured goods and trans-shipping them,[2] extra food to save the lives of cattle insured against the risk of mortality,[3] reconditioning expenses on goods damaged by water,[4] and the cargo's proportion of towing charges when the carrying vessel has been disabled.[5]

On the other hand, it has been held that general average expenses,[6] appraisal expenses to determine the amount of loss,[7] reconditioning cargo for the market,[8] salvage expenses,[9] and the expenses of defending a suit against a tug insured against liability to its tows[10] are not recoverable. By the clause now under consideration, the company agrees to contribute to the charges incurred by the assured's efforts to preserve the property. In the absence of such an agreement, there is no liability on the part of the company for such charges.[11]

[1] *Pride v. Provident-Wash. Ins. Co.*, 6 Pa. Dist. 227, (1897), policy covering tower's liability. See contra *Munson v. Standard Marine Ins. Co.*, 156 Fed. 44 (1907).

[2] *St. Paul Fire and Marine Ins. Co. v. Pacific Co.*, 157 Fed. 625 (1907); *Indianapolis Ins. Co. v. Mason*, 11 Ind. 171 (1858); *Kidston v. Empire Ins. Co.*, L.R. 2 C.P. 357 (1867).

[3] *The Pomeranian*, L.R. [1895] P.D. 349.

[4] *Francis v. Boulton*, 8 Asp. 79 (1895).

[5] *Standard Marine Ins. Co. v. Nome Beach Co.*, 133 Fed. 636 (1904).

[6] *Aitchison v. Lohre*, 4 App. Cas. 755 (1879); *Montgomery v. Indem. Ins. Co.*, [1901] 1 K.B. 147, affd. [1902] 1 K.B. 734.

[7] *Cory v. Boylston*, 107 Mass. 140 (1871).

[8] *Id.*

[9] *Buzby v. Phoenix Ins. Co.*, 31 Fed. 422 (1887); *Aitchison v. Lohre, supra*, in which Lord Blackburn drew a distinction between salvage as such and the rendering of services pursuant to a contract of hire. He said, "I do not say that such hire may not come within the suing and labouring clause."

[10] *Munson v. Standard Marine Ins. Co.*, 156 Fed. 44 (1907); *Xenos v. Fox*, L.R. 4 C.P. 665 (1869). See *contra Pride v. Prov.-Wash. Ins. Co.*, 6 Pa. Dist. 227 (1894), and *Marine Transit Corp. v. Ins. Cos.*, 2 Fed. Supp. 489, 1933 A.M.C. 350, affd. 67 Fed. (2nd) 544, 1933 A.M.C. 1631.

[11] *American Marine Ins. Co. v. Liberty S. & G. Co.*, 282 Fed. 514 (1922); *Munson v. Standard Marine Ins. Co.*, 156 Fed. 44 (1907).

50. Subrogation.

When an insurer pays for damage to or loss of the insured property, he is entitled as a matter of law to all the rights that the assured would have had against the parties, if any, who caused the damage or loss.[1] This right of subrogation is based on principles of equity and natural justice and is similar to that conferred by the assignment of a cause of action.[2] The right does not arise until the insurer has paid, and while the insurer thereupon acquires all the rights possessed by the assured, it acquires no more.[3]

Although in a suit against the party who caused the damage, recovery for all the damages may be had,[4] the insurer is entitled to no more than the amount it has paid.[5] At common law the action had to be commenced in the name of the assured, but in Equity and in Admi-

[1] *St. Louis Ry. Co. v. Commercial Ins. Co.*, 139 U.S. 223, 235, 11 Sup. Ct. Rep. 554, 35 L. ed. 154 (1890); *Ocean Corp. v. Hooker Co.*, 240 N.Y. 37, 147 N.E. 351 (1925).

[2] *Ocean Corp. v. Hooker Co., supra.*

[3] *Phoenix Ins. Co. v. Erie Trans. Co.*, 117 U.S. 312, 321, 6 Sup. Ct. Rep. 750, 29 L. ed. 873 (1885); *Atchison Ry. Co. v. Neet*, 7 Kan. App. 495, 54 Pac. 134 (1898); *Cumberland Telegraph Co. v. Dooley*, 110 Tenn. 104, 72 So. 457 (1902). It has been held that part payment or a compromise with the assured does not give subrogation to the insurer. *Hanlon v. Union Bank*, 247 N.Y. 389, 160 N.E. 650 (1928); *McGrath v. Carnegie Trust Co.*, 221 N.Y. 92, 116 N.E. 787 (1917).

[4] *Mobile & Montg. Ry. Co. v. Jurey*, 111 U.S. 584, 594, 4 Sup. Ct. Rep. 566, 28 L. ed. 527 (1883).

[5] *Liverpool Steam Co. v. Phenix Ins. Co.*, 129 U.S. 397, 462, 9 Sup. Ct. Rep. 469, L. ed. 788 (1888); *The Livingstone*, 130 Fed. 746 (1904). In the *Welsh Girl*, 22 T.L.R. 475 (1906), where the insurers and the assured were coinsurers on hull it was held that they must share the recovery pro rata. A similar result was reached in *The Inverurie*, 3 Fed. Supp. 564, 1933 A.M.C. 675, affd. 67 Fed. (2nd) 1012, 1933 A.M.C. 1644, where the parties were coinsurers on cargo. In *Washtenaw v. Budd*, 208 Mich. 483, 175 N.W. 231 (1919), it was held that the insurer under a fire policy cannot share in the recovery until the assured has been fully indemnified for his loss and the expenses of effecting the recovery.

ralty and under some state codes the insurer may assert its right of subrogation in its own name.[1] For strategic reasons the insurer often does not wish to use its own name, or perhaps cannot do so if it has advanced the money to the assured in the form of a loan rather than by a payment for the loss. In order that the parties may be in accord as to their respective rights, the following clause is ordinarily made a part of the policy:

It is expressly agreed that upon payment of any loss or advancement or loan of moneys concerning the same, the Assured will at the request and expense of the Company, and through such counsel as the Company may designate, make claim upon and institute legal proceedings against any carrier, bailee, or other parties believed to be liable for such loss, and will use all proper and reasonable means to recover the same.

This clause is designed to give the insurers a right to sue offending third parties, whether the assured has received his money as a payment or as a loan. The agreement provides that the assured will, if the company request, make claim and sue the party believed to be liable for the loss. The insurer chooses the attorneys to carry on the litigation and bears the expense thereof, but the suit is usually commenced in the name of the assured. The action, therefore, is to all intents and purposes that of an underwriter suing on its right of subrogation. The assured on his part agrees to use all proper and reasonable means to effect a recovery. That is, he must assist the underwriter with information and evidence if necessary.[2] Of course if the assured has

[1] *St. Louis Ry. Co. v. Commercial Ins. Co.*, 139 U.S. 223, 235, 11 Sup. Ct. Rep. 554, 35 L. ed. 154 (1890).

[2] Where the assured agrees to "coöperate" with the insurer he is required to make a full, fair, and frank disclosure of all information reasonably requested, and to aid in the defense by testifying truthfully

stipulated that the wrongdoer may have the benefit of the insurance, no suit for recovery can be successful[1] unless the policy contains a bailee clause.[2]

51. Impairment of Right of Subrogation.

As an insurance company's successful operation depends to a considerable extent on its ability to recoup its losses from offending parties, it guards its rights of subrogation jealously, and will not readily permit such rights to be lost or impaired. It has been held that loss or impairment of the right of subrogation results if the assured, prior to suffering a loss, agrees that a carrier may have the benefit of the assured's insurance,[3] or if he agrees not to hold liable the party causing the loss,[4] or if, after a loss occurs, the assured without the consent of his underwriters accepts a settlement from the offender.[5] Where by the terms of the policy the assured agrees that on payment of a loss the insurer shall have subrogation, the insured will be denied any recovery on this policy if he settles with the wrongdoer;[6] and if after

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when called as a witness and to refrain from collusion with opponents. *Wheeler v. Lumberman's Mutual Casualty Co.*, 5 Fed. Supp. 193 (1933).

[1] *Wager v. Providence Ins. Co.*, 150 U.S. 99, 14 Sup. Ct. Rep. 55, 37 L. ed. 1013 (1893); *North British Ins. Co. v. Cent. Vt. R.R. Co.*, 9 A.D. 4 (1896), affd. 158 N.Y. 726, 53 N.E. 1128.

[2] See sec. 46.

[3] *Fayerweather v. Phenix Ins. Co.*, 118 N.Y. 324, 23 N.E. 192 (1890); *Wager v. Prov. Ins. Co.*, 150 U.S. 99, 108, 14 Sup. Ct. Rep. 55, 37 L. ed. 1013 (1893). But see sec. 46.

[4] *Hartford Ins. Co. v. Chicago Ry. Co.*, 175 U.S. 91, 20 Sup. Ct. Rep. 33, 44 L. ed. 84 (1899); *City of N.Y. Ins. Co. v. Railway Co.*, 159 Iowa 129, 140 N.W. 373 (1913).

[5] *Ocean Corp. v. Hooker Co.*, 240 N.Y. 37, 147 N.E. 351 (1925).

[6] *Highlands v. Fire Ins. Co.*, 203 Pa. 134, 52 Atl. 130 (1902); *Niagara Fire Ins. Co. v. Fidelity Co.*, 123 Pa. 516, 16 Atl. 790 (1889); *Packham v. German Fire Ins. Co.*, 91 Md. 515, 46 Atl. 1066 (1900). See also *Connecticut Fire Ins. Co. v. Erie R.R. Co.*, 73 N.Y. 399 (1878), and *Phoenix Ins. Co. v. Parsons*, 129 N.Y. 86, 29 N.E. 87 (1891). In New Jersey the

payment he effects a settlement with the wrongdoer, the insurer can require repayment of the insurance money.[1]

It is, therefore, usually provided by the transportation policy that

> Any act or agreement by the Assured, prior or subsequent hereto, whereby any right of the Assured to recover the full value of, or amount of damage to, any property lost or injured and insured hereunder, against any carrier, bailee, or other party liable therefor, is released, impaired or lost, shall render this policy null and void, but the Insurer's right to retain or recover the premium shall not be affected. This Company is not liable for any loss or damage which, without its consent, has been settled or compromised by the assured.

Perhaps the most common instance of impairing the right of subrogation before a loss occurs is by the acceptance by the assured of receipts or bills of lading in which it is stipulated that a bailee or carrier will, in case of damage to the assured's goods, be liable only to a limited extent. The practice of issuing such receipts and bills of lading is so common and is so difficult to avoid that many underwriters give special permission to their assured to accept them. Thus some policies provide:

> It is agreed, however, that the assured may, without prejudice to this insurance, accept the ordinary bills of lading issued by carriers.

or

> It is agreed that the assured may accept bills of lading with a released liability of $50 per package.

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giving of a release by the assured has been held not to bar a suit by the insurer against the tort-feasor. *Camden Ins. Co. v. Prezioso*, 93 N.J. Eq. 318, 116 Atl. 694 (1922); *Martin v. Lehigh Ry. Co.*, 90 N.J.L. 258, 100 Atl. 345 (1917).

[1] *Illinois Auto Ins. Co. v. Braun*, 280 Pa. 550, 124 Atl. 691 (1925); *Metropolitan Casualty Co. v. Badler*, 229 N.Y. Supp. 81, 132 Misc. 132 (1928); *Manley v. Montgomery Bus Co.*, 82 Pa. Super. Ct. 530 (1924). But see *Hamilton Fire Ins. Co. v. Greger*, 246 N.Y. 162, 158 N.E. 60 (1927).

or

Privileged to ship under released bills of lading and/or express receipts and/or released receipts of other carriers.[1]

These clauses refer only to carriers. If the receipts of bailees generally are to be included, words to that effect should be added if the assured would avoid forfeiting his rights under the policy.

52. Suits against Insurer.

The customary clause with respect to the commencement of suits against the insurer is as follows:

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the requirements of this policy, nor unless commenced within twelve months next after the happening of the loss, provided that where such limitation of time is prohibited by the laws of the state wherein this policy is issued, then, and in that event, no suit or action under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such state.

While by this clause the assured agrees in general terms to comply with all the requirements of the policy, the principal purpose of the clause is to expedite the liquidation of claims against the insurer. If after a denial of liability or a failure to pay, the assured desires to commence an action against his underwriters, it is desirable that such proceedings be started promptly. Therefore, it is agreed that no suit will be "sustainable" unless commenced within 12 months after the loss occurs,

[1] Marine policies on cargo now generally provide: "The liberties as per contract of affreightment, the presence of the negligence clause and/or latent defect clause in the bills of lading and/or charter party and/or contract of affreightment as between the assured and assurer shall not prejudice this insurance," but make no reference to the limitation-of-liability clause.

except that in states where such a limitation is prohibited the action must be started within the minimum period allowed in that state.

In most states where the statutes do not prohibit a limitation of 12 months, the clause has long been held valid, and a literal compliance with it is considered a condition precedent to the assured's right to recover.[1] There are, however, some jurisdictions where under a similar clause in the fire policy it has been held that, because of the requirements for appraisal and filing proofs of loss, time does not commence to run until these preliminaries have been performed and the agreed time for payment thereafter has elapsed.[2]

Neither the infancy of the assured,[3] nor his ignorance of the existence of the limitation,[4] nor the fact that the limitation is not mentioned in a certificate issued under an open policy,[5] is an excuse for non-compliance. However, as the clause is a harsh one and works a forfeiture when upheld, the courts do not require very strong evidence in order to find that it has been waived.[6] It has been held, for example, that failure to furnish blank forms for proofs of loss on the assured's request,[7] or

[1] *Riddlesbarger v. Hartford Ins. Co.*, 7 Wall. 386, 19 L. ed. 257 (1868); *Ripley v. Aetna Ins. Co.*, 30 N.Y. 136 (1864); *Roach v. N.Y. & Erie Ins. Co.*, 30 N.Y. 546 (1864); *Lewis v. Metropolitan Life Ins. Co.*, 180 Mass. 317, 62 N.E. 369 (1902); *Ronan v. Mich. Mutual Ins. Co.*, 96 Ill. App. 355 (1901).

[2] *German Ins. Co. v. Davis*, 40 Neb. 700, 59 N.W. 698 (1894); *Read v. State Ins. Co.*, 103 Iowa 307, 72 N.W. 665 (1897). See also *Messler v. Williamsburg Ins. Co.*, 42 R.I. 460, 108 Atl. 832 (1920).

[3] *Gallivitoch v. Provident Ins. Co.*, 26 Ga. App. 385, 106 S.E. 319 (1921); *Mead v. Phoenix Ins. Co.*, 68 Kan. 432, 75 Pac. 475 (1904).

[4] *DeGrove v. Metropolitan Ins. Co.*, 61 N.Y. 594, 605 (1875).

[5] *Brandyce v. Globe & Rutgers Ins. Co.*, 252 N.Y. 69, 168 N.E. 832, 1930 A.M.C. 7; *Hart v. Automobile Ins. Co.*, 246 N.Y. Supp. 586, 140 Misc. 399 (1930).

[6] *Fellman v. Royal Ins. Co.*, 184 Fed. 577 (1911).

[7] *Simmons v. Western Indemnity Co.*, 210 S.W. 713 (Tex.) (1919).

corresponding with respect to an adjustment,[1] or misleading the assured with respect to the time for commencing suit,[2] constitutes a waiver of the suit clause.

53. The Reinstatement Clause.

The *reinstatement clause* provides:

> Every claim paid hereunder reduces the amount of insurance by the sum so paid, but it is a condition of this policy that in the event of loss, the Assured agrees to pay the Insurer additional premium or premiums at pro rata rates on the amount of such loss and to reinstate the full amount of this policy, such reinstatement to take effect immediately upon the occurrence which occasioned the loss, and the charges therefor to be made from such date.

This or a similar clause is used only when the policy is written for a flat premium rather than an *ad valorem* premium. As the agreement to readjust the premium in accordance with the value of the goods at risk is inconsistent with an agreement to pay a flat premium, the policy provides for a waiver of the reinstatement clause when the premium readjustment clause is used.[3] As most transportation policies are written on an *ad valorem* basis, the reinstatement clause is rarely in force.

The purpose of the clause is to keep the assured covered at all times for the agreed amount and also to provide that the premium will at all times be commensurate with the risk. Suppose, for example, that *A* insures his shipments for one year in the sum of $10,000 and is charged a premium of $200. If at the end of two months he suffers a loss of $5,000, which is paid, the insurer will continue the coverage for $10,000 for the remaining ten

[1] *Barnum v. Merchants' Fire Ins. Co.*, 97 N.Y. 188 (1884); *Actiebolaget v. Hanover Fire Ins. Co.*, 211 A.D. 608, 208 N.Y. Supp. 173, rev. 241 N.Y. 197, 149 N.E. 830 (1925).

[2] *McDaniel v. German Ins. Co.*, 134 Ga. 189, 67 S.E. 668 (1909).

[3] *Supra*, sec. 12.

months only on the payment of an additional premium. It is, therefore, provided that whenever a claim is paid, the amount of *A*'s insurance is reduced by the amount paid. However, in order that *A* may continue to be insured for $10,000, it is provided that the full amount of insurance will be reinstated at once, and that *A* will pay an additional premium on $5,000 for the remaining ten months of the insured period.

In order that there may be no lapse, it is agreed that the reinstatement will take effect immediately on the occurrence which caused the loss and that the additional premium will be calculated from that date. Under this clause, if *A* having insured for $10,000 suffers a $5,000 loss on any day within the insured period and before that loss can be reported and adjusted, he suffers a $7,000 loss (still within the insured period), he can recover for both losses although he was at no time insured for more than $10,000.

54. Assignment of Policy.

A policy of insurance being a personal contract is not assignable, and the transfer of the insured property does not carry the insurance to the new owner.[1] On this point the policy provides:

> This policy shall be void if assigned or transferred without the written consent of this company.

The clause is merely a statement of the law that would be applied in the absence of any agreement on the subject; and although it is strictly enforced[2] it does not prohibit

[1] *Lett v. Guardian Fire Ins. Co.*, 125 N.Y. 82, 25 N.E. 1088 (1890); *Swaine v. Teutonia Fire Ins. Co.*, 222 Mass. 108, 109 N.E. 825 (1915).

[2] *New v. German Ins. Co.*, 5 Ind. App. 82, 31 N.E. 475 (1892); *Lett v. Guardian Ins. Co.*, *supra*.

pledging the policy as security for a debt[1] or assigning the cause of action that arises against the insurer after a loss, even though the assignment is in form a transfer of the policy.[2]

If the insurer consents to the assignment of the policy, the assignment is said to operate by way of novation to discharge the rights and obligations of the original parties and give birth to a new contract between the insurer and the assignee on the old terms.[3] This new contract cannot be disturbed by any subsequent act of the assignor nor by payment to him,[4] and there is good authority to the effect that it cannot be disturbed by prior breaches by the assignor, even though they were unknown to the insurer at the time its consent was given.[5]

55. Cancellation.

Transportation policies usually allow broad liberties of cancellation. The clauses have not been standardized but appear in a variety of forms. Whatever the agreement may be, there must be a strict compliance with it by the party seeking to cancel.[6] It is not sufficient merely to express a wish to cancel or an intention to cancel at some future time,[7] or to propose a reduction

[1] *Griffey v. N.Y. Cent. Ins. Co.*, 100 N.Y. 417, 3 N.E. 309 (1885); *Matthews v. Capital Fire Ins. Co.*, 115 Wis. 272, 91 N.W. 675 (1902).

[2] *Frels v. Little Black Ins. Co.*, 120 Wis. 590, 98 N.W. 522 (1904); *Mellen v. Hamilton Fire Ins. Co.*, 17 N.Y. 609 (1858).

[3] *Swaine v. Teutonia Fire Ins. Co.*, 222 Mass. 108, 109 N.E. 825 (1915).

[4] *Pollard v. Somerset Ins. Co.*, 42 Me. 221 (1856).

[5] *Smith v. Northwestern Fire and Marine Ins. Co.*, 246 N.Y. 349, 159 N.E. 87 (1927), and cases cited there.

[6] *Baldwin v. Penna. Fire Ins. Co.*, 206 Pa. St. 248, 55 Atl. 970 (1903); *Hughes v. Royal Indem. Co.*, 165 N.Y. Supp. 530 (1917); *Molyneaux v. Royal Exchange*, 235 Mich. 678, 209 N.W. 803 (1926); *Letvin v. Phoenix Ins. Co.*, 91 Pa. Sup. Ct. 422 (1926); *Pomerantz v. Mutual Fire Ins. Co.*, 279 Pa. St. 497, 124 Atl. 139 (1924).

[7] *Van Valkenburgh v. Lenox Fire Ins. Co.*, 51 N.Y. 465 (1873); *Griffey v. N.Y. Cent. Ins. Co.*, 100 N.Y. 417, 3 N.E. 309 (1885).

of the amount of insurance.[1] In short the notice of cancellation must be absolute and unambiguous. It must be open to one interpretation only.

The general rule is that where an insurance policy permits a cancellation by the giving of notice, the notice is not effective until it is actually received by the party to whom it is sent or his authorized representative.[2] Furthermore, even though the policy provides for cancellation by notice only, many authorities hold that if the insurer desires to terminate the contract it must also pay or tender the unearned premiums to the assured at the time of serving its notice.[3] The assured, however, may cancel by the mere giving of notice. It is not necessary that he surrender the policy or that the unearned premium be returned to him.[4]

The cancellation agreements inserted in transportation policies seek to avoid to some extent the rules referred to in the last paragraph. The following clauses, which often appear together, are typical of those now in use:

It is a condition of this policy that if the premium be not paid within sixty days from the date of attaching, this policy shall be null and void during the time the premium is past due and unpaid.

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[1] *Van Tassel v. Greenwich Ins. Co.*, 151 N.Y. 130, 45 N.E. 365 (1896).

[2] *Crownpoint Iron Co. v. Aetna Ins. Co.*, 127 N.Y. 608, 28 N.E. 653 (1891); *Louisiana Pub. Co. v. Atlas Assur. Co.*, 238 A.D. 474, 264 N.Y. Supp. 603 (1933); *Mullen v. Dorchester Ins. Co.*, 121 Mass. 171 (1876); *Farnum v. Phoenix Ins. Co.*, 83 Calif. 246, 23 Pac. 869 (1890); *Bankers Mutual Casualty Co. v. Bank*, 127 Ga. 326, 56 S.E. 429 (1907).

[3] *Grant Lumber Co. v. North River Ins. Co.*, 253 Fed. 83 (1918); *German Fire Ins. Co. v. Clarke*, 116 Md. 622, 82 Atl. 974 (1911), in both of which the authorities pro and con are collected. In New York a tender of the premiums is required, *Tisdell v. New Hampshire Fire Ins. Co.*, 155 N.Y. 163, 49 N.E. 664 (1898); *Nitsch v. American Cent. Ins. Co.*, 152 N.Y. 635, 46 N.E. 1149 (1897); *Buckley v. Citizens' Ins. Co.*, 188 N.Y. 399, 81 N.E. 165 (1907); but see dissenting opinion in the Tisdell case.

[4] *Gately-Hare Co. v. Niagara Fire Ins. Co.*, 221 N.Y. 162, 116 N.E. 1015 (1917); *Parsons v. Northwestern Nat. Ins. Co.*, 110 N.W. 907 (Iowa) (1907).

This policy shall be cancelled at any time at the request of the Assured; or by the Company by giving —— days' notice of cancellation. If this policy shall be cancelled as hereinbefore provided or become void or cease, the premium having actually been paid, the unearned portion shall be returned on surrender of this policy, this Company retaining the customary short rate; except that when this policy is cancelled by this Company by giving notice it shall retain only the pro rata premium. Notice of cancellation mailed to the last known address of the Assured shall be a sufficient notice; the check of this Company, or its Agents, when similarly mailed, shall be a sufficient tender of any unearned premium.

The first clause is frequently called the automatic cancellation clause. This provision has been interpreted to mean that if the premium be not paid within 60 days from the date on which the policy attaches, it will be voidable at the election of the insurer, not that it will be absolutely void.[1] The clause therefore may be waived by treating the policy as if it were in effect after 60 days, *e.g.*, by demanding the premium or threatening to cancel for non-payment.[2] However, if the clause is not waived by the insurer non-payment within 60 days will forfeit the policy.[3]

The second clause quoted above describes the manner in which the insurance contract may be terminated by either of the parties. If the assured wishes to cancel a policy containing this clause, it is only necessary that he request the insurer to cancel. He need not surrender the policy or wait for the unearned premium to be returned to him.[4]

[1] *Robinson v. Western Assurance Co.*, 211 Fed. 747 (1914); *Grigsby v. Russell*, 222 U.S. 149, 32 Sup. Ct. Rep. 58, 56 L. ed. 133 (1911).

[2] *Robinson v. Western Assurance Co., supra.*

[3] *Becker v. Exchange Fire Ins. Co.*, 177 Fed. 918 (1910).

[4] *Gately-Hare Co. v. Niagara Fire Ins. Co.*, 221 N.Y. 162, 116 N.E. 1015 (1917); *Parsons v. Northwestern Ins. Co.*, 113 Iowa 532, 110 N.W. 907 (1907).

The procedure is not quite so simple for the insurer. The policy provides that he must give the assured —— days' notice of cancellation.[1] As the assured may change his address without notifying his underwriters, it is agreed that "notice of cancellation mailed to the last known address of the assured shall be a sufficient notice." This and similar clauses have been considered in a number of recent cases. In *Werner v. Commonwealth Casualty Co.*[2] the policy contained an agreement similar to the one just quoted. The company sent a notice of cancellation to the agreed address by registered mail requiring the personal receipt of the assured. The letter was never delivered and was returned unclaimed. The court held that the mailing referred to in the policy was ordinary mailing and not a mailing which required a personal receipt, which might and in this case did prevent the notice from reaching the addressee. In the course of its opinion the court said:

> In attempting to procure the personal receipt of the assured for its own evidential purposes it [the insurer] overreached itself and defeated the very object of the provision of the policy—reasonably certain notice to the assured and relief of the company from following his changes of address.

The same result has been reached in New York[3] and in Alabama.[4] In one New York case[5] the envelope bore a notice saying, "Personal receipt of addressee required." Referring to this notice, the court said:

> Such written notice simply meant that, if the addressee was not present at the time the postman called, the envelope containing the

[1] The time varies but usually is not less than 5 or more than 30 days.

[2] 109 N.J.L. 119, 160 Atl. 547 (1932).

[3] *Kamille v. Home Fire Ins. Co.*, 221 N.Y. Supp. 38, 129 Misc. 536 (1925); *Rose Inn Corp. v. Nat. Union Ins. Co.*, 232 N.Y. Supp. 351, 133 Misc. 440 (1929).

[4] *American Auto Ins. Co. v. Watts*, 12 Ala. App. 518, 67 So. 758 (1914).

[5] *Kamille v. Ins. Co., supra.*

notice of cancellation could not be left at plaintiff's address . . . If the letter had been left at plaintiff's address, the same might have been called for by the plaintiff at some time, or the letter might have been forwarded to him, wherever he might reside. In other words, the written notice in question appearing on the envelope provided for a delivery of the letter only in case the addressee was found to personally receipt for the same. I am of the opinion, therefore, that the notice of cancellation was not mailed in the manner required by the cancellation clause in the policy.

However, if under such a clause, the insurer sends a proper notice by ordinary mail to the agreed address, the notice will be effective whether or not it ever reaches the assured.[1] And if the agreement is that the notice may be sent by registered letter, a notice so sent will effect a cancellation regardless of whether it is delivered to the addressee. It is immaterial whether the assured receives the notice or not.[2]

The policy does not state that the company must return the unearned premium with its notice of cancellation. The agreement is that if the policy shall be cancelled or "become void or cease" after payment of the premium, the unearned premium will be returned on surrender of the policy. Under this clause some courts hold that the unearned premium need not be returned until the policy has been surrendered;[3] but others hold that, where the insurer cancels, the unearned premium must be returned at time of cancellation.[4]

If the insurer cancels, it must return a proportional part of the premium for the unexpired term; but, if the

[1] *Raiken v. Commercial Casualty Co.*, 135 Atl. 479 (N.J.) (1926).

[2] *Skoczlois v. Vinocour*, 221 N.Y. 276, 116 N.E. 1004 (1917).

[3] *Mangrum v. Law Union Ins. Co.*, 172 Calif. 497, 157 Pac. 239 (1916); *Schwarzchild v. Phoenix Ins. Co.*, 115 Fed. 653 (1902), affd. 124 Fed. 52; *Webb v. Granite State Ins. Co.*, 164 Mich. 139, 129 N.W. 19 (1910); *Davidson v. German Ins. Co.*, 74 N.J.L. 487, 65 Atl. 996 (1906).

[4] *Buckley v. Citizens' Ins. Co.*, 188 N.Y. 399, 81 N.E. 165 (1907); *Baldwin v. Penna. Fire Ins. Co.*, 206 Pa. 248, 55 Atl. 970 (1903).

assured cancels, the customary short rate, which is slightly higher, is retained and the balance refunded.

56. Agency.

A further clause appearing in most of these policies reads:

> If any party or parties other than the Assured have procured this Policy, or any renewal thereof, or any endorsement thereon, they shall be deemed to be the Agents of the Assured and not of this Company in any and all transactions and representations relating to this insurance.

This stipulation or others like it appeared in the fire policy for many years. Under some of the early decisions, the agreement was literally enforced even though the party procuring the policy was the recognized agent of the insurer. Thus in *Rohrbach v. Germania Fire Insurance Co.*,[1] where an applicant for insurance made a full disclosure to the insurer's agent, who failed to report some material facts to the company, it was held that the agent represented the assured in procuring the policy and hence that the company could defeat a suit for a loss on the ground of concealment. Later decisions sought to distinguish these cases, apparently because of the harsh rule there established.[2] No hard and fast rules may be laid down as to when the party procuring the policy will be held to be the assured's agent. Indeed, the question seems to depend upon the facts of each case rather than on the words of the policy.[3]

[1] 62 N.Y. 47 (1875). See also *Alexander v. Germania Ins. Co.*, 66 N.Y. 464 (1876).

[2] *Whited v. Germania Ins. Co.*, 76 N.Y. 415 (1879); *Allen v. German American Ins. Co.*, 123 N.Y. 6, 25 N.E. 309 (1890); *Sternaman v. Metropolitan Life Ins. Co.*, 170 N.Y. 13, 62 N.E. 763 (1902).

[3] *Richards*, 4th ed. p. 222 and cases cited there.

However, as a general rule, a person employed to solicit insurance on behalf of the insurer will be regarded as the insurer's agent, even though he renders some assistance to the assured.[1] On the other hand a broker who procures a policy at the request of a client will generally be regarded as the agent of the assured, and in the absence of some evidence from which a general authority to represent the insurer may be fairly inferred, he will not be held the agent of the company.[2] As was said in *Allen v. German American Insurance Co.*,[3] the broker is the conduit between the insurer and the assured for the delivery of the policy and the collection of the premium, and to that extent he becomes the company's agent; but no other powers may be predicated on those acts.[4] Such a broker cannot, for example, extend credit to the assured, defer the time of payment, or take promissory notes payable to himself for the premium.[5]

[1] *Insurance Co. v. Wilkinson*, 13 Wall. 222, 20 L. ed. 617 (1871); *State Ins. Co. v. Taylor*, 14 Colo. 499, 24 Pac. 333 (1890); *Cont. Ins. Co. v. Pearce*, 39 Kan. 396, 18 Pac. 291 (1888); *Aetna Ins. Co. v. McCullagh*, 185 Ky. 664, 215 S.W. 821 (1919).

[2] *Allen v. German American Ins. Co.*, 123 N.Y. 6, 25 N.E. 309 (1890); *Northrup v. Piza*, 43 A.D. 284, 60 N.Y. Supp. 363 (1899) affd. 167 N.Y. 578, 60 N.E. 1117.

[3] *Supra.*

[4] Whether or not the broker is the company's agent for collecting the premium depends on the relations between insurer and the broker. If the insurer extends credit to the broker and looks to him for payment and follows a similar practice with respect to other assured, he will usually be held the insurer's agent, *Globe & Rutgers v. Lesher*, 215 N.Y. Supp. 225, 126 Misc. 874 (1926); *Firemen's Fund v. Hall*, 197 N.Y. Supp. 300, 119 Misc. 702 (1922); *Greenwich Ins. Co. v. Union Dredging Co.*, 14 Daly (N.Y.) 237 (1887); but if no such course of dealing is shown, the broker will generally, and in the absence of statute, be regarded as the assured's agent, *Casper v. American Eq. Co.*, 257 N.Y. Supp. 632, 143 Misc. 916 (1932); *Citizens Fire Ins. Co. v. Swartz*, 47 N.Y. Supp. 1107, 21 Misc. 671 (1897).

[5] *Manhattan Laundry Co. v. Guardian Casualty Co.*, 257 N.Y. Supp. 144, 143 Misc. 767 (1932); *Thompson v. Equitable Assurance Soc.*, 199 N.C. 59, 154 S.E. 21 (1930).

57. Waiver.

The subject of waiver has been mentioned several times. The statement has been made that the conditions respecting notice of loss and proofs of loss and other matters may be waived by the acts of the insurer. These statements have been made without reference to the stipulation, which provides that

> no officer, agent, or other representative of the company shall have power to waive or be deemed to have waived any provision or condition of this policy unless such waiver, if any, shall be written hereon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the assured unless so written or attached.

Many years ago the United States Supreme Court held a similar clause valid and said that it was one that ought to be given full force and effect.[1] Some state courts agree,[2] but many others permit clauses of this kind, together with other clauses of the policy, to be waived by the acts of the insurer.[3] According to these courts any stipulation in the policy may be waived,

[1] *Northern Assurance Co. v. Building Assn.*, 183 U.S. 308, 361, 22 Sup. Ct. Rep. 133, 46 L. ed. 213 (1901); but see *Concordia Ins. Co. v. School District*, 282 U.S. 545, 51 Sup. Ct. Rep. 275 (1930), where the clause was held not to apply to a waiver, after a loss occurs, of stipulations in respect of things to be done subsequent to the loss as prerequisites to adjustment and payment.

[2] *Paulaskas v. Fireman's Fund Ins. Co.*, 254 Mass. 1, 149 N.E. 668 (1925); *O'Leary v. Merchants Ins. Co.*, 100 Iowa 173, 69 N.W. 420 (1896); *Traveler's Ins. Co. v. Myers*, 62 Ohio St. 529, 57 N.E. 458 (1900).

[3] *Orient Ins. Co. v. Knight*, 197 Ill. 190, 64 N.E. 399 (1902); *Corp. Assurance v. Franklin*, 158 Ga. 644, 124 S.E. 172 (1924); *Phenix Ins. Co. v. Hart*, 149 Ill. 513, 36 N.E. 990 (1894); *Weed v. L. & L. Ins. Co.*, 116 N.Y. 106, 117, 22 N.E. 229, 232 (1889). See also cases collected in *German Ins. Co. v. Shader*, 68 Neb. 1, 93 N.W. 972 (1903).

including the one prohibiting waivers unless written on or attached to the policy. The theory is that a party always has the option to waive a condition or a stipulation made in his own favor.[1]

In the absence of an express written waiver therefore, it is under these decisions a question of fact whether the insurer's act constitutes a waiver or estops it from relying on the policy clauses inserted for its benefit. Generally speaking, if the insurer takes a position inconsistent with the position given it by the policy, or if after learning of facts which amount to a breach or a forfeiture does anything which indicates that it does not intend to stand on the rights to which it becomes entitled because of those facts, it will be held to have waived the stipulations on which it could have relied. Thus the automatic cancellation clause may be waived by demanding or accepting the overdue premium after the expiration of 60 days from date of attachment of the policy;[2] the filing of proofs of loss within the required time may be waived by a denial of liability[3] or by stating that the company's form need not be used;[4] the clause prohibiting an assignment may be waived by attempts to save the property and by leading the assignee to expect prompt payment;[5] and the clause regarding agency may be waived by permitting some one other than the company's agent (the assured's broker as a rule) to represent the insurer.[6]

[1] *Insurance Co. v. Norton*, 96 U.S. 234, 240, 24 Sup. Ct. Rep. 689 (1877), *Iowa Life Ins. Co. v. Lewis*, 187 U.S. 335, 348, 23 Sup. Ct. Rep. 126, 47 L. ed. 204, (1902); *Phenix Ins. Co. v. Hart*, 149 Ill. 513, 524 (1894).

[2] *Robinson v. Western Assurance Co.*, 211 Fed. 747 (1914); *Globe Ins. Co. v. Wolff*, 95 U.S. 326, 24 L. ed. 387 (1877).

[3] *Prudential Ins. Co. v. Devoe*, 98 Md. 584, 56 Atl. 809 (1904); *Cooper v. Ins. Co. of St. of Penna.*, 96 Wis. 362, 71 N.W. 606 (1897).

[4] *Northwestern Casualty Co. v. Pike*, 53 Fed. (2nd) 791 (1931).

[5] *Hilton v. Federal Ins. Co.*, 1932 A.M.C. 193 (Calif.).

[6] See sec. 56.

However, this does not mean that the subject matter of the insurance or the risks covered may be extended by waiver. Such an extension seems to require a new consideration, *i.e.*, a new contract.[1]

[1] *McCoy v. Northwest Mutual Assn.* 92 Wis. 577, 66 N.W. 697 (1896); *Sanders v. Cooper*, 115 N.Y. 279, 22 N.E. 212 (1889); *Ruddock v. Detroit Life Ins. Co.*, 209 Mich. 638, 117 N.W. 242 (1920).

CHAPTER IV

OTHER TRANSPORTATION POLICIES

58. Other Transportation Policies.

Thus far consideration has been given to what is usually called the transportation policy, *i.e.*, the policy which insures goods on a time basis while they are actually or technically in transit by some kind of common carrier. While that policy is the most important of the transportation group, there are several other policies which rightfully fall under this head and deserve some attention. Among these other policies are the trip transit policy, the parcel post policy, the registered mail policy, the armored car and messenger policy, and the owner's form of the motor or automobile transit policy.

59. Trip Transit Policy.

In its general form the *trip transit policy* resembles the transportation policy. The chief point of distinction is that the former covers only one trip or one movement of goods or merchandise while the latter covers a succession of shipments made during the insured period. The trip transit policy is designed to serve persons who occasionally, rather than continuously, have need of transportation insurance. It is especially adapted to cover household and office furnishings, stocks of merchandise, personal belongings, and so forth.

The risks covered and excluded and the stipulations of the contract are similar to those contained in the transportation policy and the customary endorsements attached thereto, though not quite identical with them.

All of these have been discussed in the preceding chapters. A few of the stipulations appearing in the transportation policy are omitted because they are not applicable to goods insured for a single trip. Thus the clause with respect to territorial limits is omitted because the termini of the trip are agreed to on the face of the policy; and the clause regarding other or double insurance is not ordinarily used because it is thought unlikely that an assured seeking a trip transit policy would have any other insurance on the goods.

60. Parcel Post Policy.

The *parcel post form* is designed to meet the requirements of shippers who do not ordinarily use the services of the various common carriers named in the transportation policies heretofore described. The contract is especially adapted to meet the needs of the manufacturer, jobber, and retailer of small articles, such as are customarily shipped by parcel post rather than by rail or water carriers or by motor truck.[1] While articles shipped by parcel post will be insured by the Government on request, the necessity of insuring each package separately and the delay in obtaining payment for lost property have caused many shippers to prefer the insurance offered by the companies willing to grant this coverage.

Two forms of policy are available to the shipper—the open form and the coupon form. Under the open form the assured agrees to keep a record of all shipments made and the value thereof and to make a monthly report to the insurer. The premium is based on the value of the goods shipped. Under the coupon form a book of coupons is issued to, and paid for by, the assured. He

[1] The form of policy on which the present discussion is based is that currently prescribed by the Inland Marine Underwriters' Association, the I.M.U.A.

agrees to detach enough coupons to correspond to the premium agreed on according to the value of each shipment and to send them to the consignee with every package insured. When the book is exhausted by the payment of premiums in this manner, another is purchased.

60*a*. *Parcel Post Coverage.*—The assured's goods are covered "while in transit by parcel post, registered or unregistered mail, from the time the property passes into the custody[1] of the Post Office Department for transmission until arrival at the address stated," except that, when shipped to foreign countries other than Canada, the property must be shipped by registered mail, registered parcel post, or Government insured parcel post, if those facilities are available.

The perils clause reads as follows:

> THIS POLICY INSURES the safe arrival of the property contained in each package and in case of loss of or damage to such package or any part of the contents thereof, from any external cause whatsoever, except as hereinafter excluded, occurring while the package is actually in the custody of the Post Office Department, the Company will reimburse the Assured therefor.

This clause is in the nature of an all risks coverage[2] but its effect as such is modified by a number of exclusions which are as a rule printed on the face of the policy. Accounts, bills, currency and other valuable papers are excluded because the policy on registered mail is designed to cover such articles. Perishable goods also are not covered except for the risks of fire, theft, pilferage, and non-arrival. And the underwriter excludes liability for losses on packages incorrectly addressed, insecurely wrapped, and on packages on which the postage is not

[1] The meaning of "in transit" and "custody of" has been discussed in secs. 19 and 22.

[2] See sec. 37.

fully prepaid or which do not bear the words, "Return postage guaranteed."

60*b*. *Parcel Post Warranties.*—Two warranties appear in the contract. By one of them the assured warrants that he will observe the General Parcel Post Act and will comply with the regulations prescribed by the Postmaster General. By the other he warrants that if any goods are shipped by Government insured parcel post each package so shipped, if valued at $100 or less, will be insured with the Government for at least 50 per cent of its value, and that all other packages so shipped will be so insured for not less than $50.

60*c*. *Parcel Post Clauses.*—In addition to these provisions, the parcel post policy contains a number of general clauses similar to those discussed in Chap. III. Under these clauses it is agreed that all losses will be reported immediately, that no loss will be recoverable unless claim is made with proof of value within four months from the date of mailing, and that no suit shall be maintainable unless commenced within 12 months after a loss occurs. The assured agrees also that the insurer may have subrogation and that he will assist in obtaining reimbursement for any loss that may occur. Further clauses permit the insurer to replace lost goods, and allow either party to cancel in a manner similar to that prescribed by the transportation policy.[1] An "other insurance" clause exempts the insurer from liability for loss or damage to property covered by other insurance (except Government insurance) a provision discussed above.[2]

A special form for shipments to foreign countries contains in addition to the stipulations described above the usual sue and labor clause and also a warranty

[1] See sec. 55.

[2] See sec. 42.

against violation of the Trading with The Enemy Acts. Under this contract, which is an open policy, it is customary to issue certificates for transmission to foreign consignees.

61. Registered Mail Policy.

The *registered mail policy* is an open form designed to insure bonds, stock certificates, postage and revenue stamps, checks, drafts, warehouse receipts, gold, silver, platinum, paper money, jewelry, precious stones, and other valuables which because of the limitation of liability imposed by the postal authorities are not adequately protected when shipped by registered mail. It also insures similar property when shipped by express. The policy covers the insured property between the premises of the sender and those of the addressee or until returned to the sender in case of non-delivery, including the time while the letter or package is in the hands of messengers or conveyances to and from the post office.

The contract is usually an all risks coverage[1] with exclusions of war risks and theft by employes of the assured or the addressee. It requires that all packages be properly sealed and mailed and their value declared. The assured is given the option of making daily, monthly, or annual reports. When one of these methods is agreed on, an endorsement corresponding with the agreement is attached to the policy in order to make it complete.

There are a number of general stipulations similar to those discussed in Chap. III. Notice of loss must be given "as soon as practicable," proofs of loss filed "within a reasonable time thereafter," and suits must be commenced within 12 months from the date of mailing or expressing. The policy contains a sue and labor

[1] See sec. 37.

clause, a cancellation clause, and an agreement by the assured to transfer to the insurer title to the property on payment of a loss, and to help in effecting a recovery.

A unique feature is an undertaking by the insurer to pay interest on lost property from date of claim to date of payment. If the assured suffers a loss of non-negotiable instruments, or property having no market value, or property declared at less than its market value, he may seek to secure duplicates. If he is successful, the insurer will be liable only for loss of interest and the expense of obtaining the duplicates and furnishing a bond indemnifying the party issuing them.

The policy usually provides only excess insurance on losses incurred while in transit by messengers or conveyances to or from the post office or express office.

62. Armored Car and Messenger Policy.

The *armored car and messenger policy* resembles in most respects the registered mail policy. It insures precious metals, currency, and valuable papers against all risks[1] except war and theft by employees of the assured, the shipper, and the consignee. Coin and paper money shipped by aircraft are also excluded. The policy covers shipments by armored motor cars and/or messengers from the time of acceptance by the carrier or messenger until "delivery to the addressee at place of address or until returned to the sender in event of non-delivery," and contains a number of general stipulations similar to those to be found in the registered mail and parcel post policies.

63. Owner's Motor Transit Policy.

All the policies heretofore considered provide transportation insurance on property while it is in transit by

[1] See sec. 37.

carriers separate and distinct from the owners of the goods. But shippers of merchandise often own and operate their own trucks. As the policies heretofore discussed are not applicable to goods shipped in this manner, most insurers in the inland marine field write policies especially adapted to cover the needs of the merchant whose goods are carried on his own automobile trucks. These forms, which appear under various names, should not be confused with those insuring the motor truckman's liability to third persons (a form that will be discussed in a subsequent chapter),[1] though formerly the two contracts were sometimes combined in one.

63*a*. *General Description.*—The *owner's motor transit policy* resembles in its general outline the transportation policy. Like that policy, it begins with statements as to the amount insured, the rate of premium, the term of the policy, etc.[2] The property insured is generally described as "lawful goods and merchandise consisting of ....., the property of the assured or sold by them and in course of delivery." This is a somewhat narrower clause than the corresponding one in the transportation policy.[3] The contract covers lawful goods which are owned by the assured or, having been sold by him, are in course of delivery. By "lawful goods" is probably meant such goods as it is lawful to buy and sell and transport.[4] Such things as narcotics and intoxicating beverages, where it is unlawful to transport them, would seem to be excluded.

[1] *Infra*, sec. 96.

[2] See secs. 11 to 13.

[3] See sec. 14.

[4] It was held many years ago that the term "lawful goods" in a marine policy includes all goods which it is lawful by the laws of this country to export. *Skidmore v. Desdoity*, 2 Johns. Cas. 77 (1800); *Seton v. Low*, 1 Johns. Cas. 1 (1799). See also *Vandespar v. Duncan*, 8 T.L.R. 30 (1891).

It is usually provided that the goods are insured "only while in the custody of the assured and actually in transit . . . and only while contained in or on the following described motor truck and/or trucks."[1] A space is then provided for a description of the trucks. Some policies contain a further stipulation that the trucks should be owned and operated by the assured but grant the assured the right to substitute other trucks for those described in the policy. The goods are not insured while they are on the premises of the owner or while on trucks other than those mentioned in the policy, and it is sometimes provided specifically that the coverage shall cease on each part of a shipment as soon as it is unloaded. Occasionally an assured's property is carried in detachable truck bodies which after being filled are loaded on the chassis. As to these, it is agreed that the insurance shall not attach until "body and contents are actually attached to or loaded on the chassis."

63*b*. *Valuation and Co-insurance.*—As it is deemed desirable in contracts of this kind that the assured shall be to some extent a co-insurer, the motor transit form usually contains a co-insurance clause which for convenience is combined with the valuation clause. The stipulation commonly used is as follows:

> All goods and merchandise insured hereunder are by agreement to be valued in case of loss or damage at amount of invoice, if any; otherwise, at cash market value on date and at place of shipment; but this Insurance Company shall in no event be liable under this Policy, as respects the contents of each truck, for a greater proportion of any loss or damage than the sum hereby insured on the contents of the truck upon which the loss shall happen, bears to the value of the contents of that truck at the time of loss, but in no case to exceed the amount of insurance on the contents of that truck.

[1] The meaning of "custody" and "in transit" has been discussed in connection with the transportation policy, secs. 19 and 22.

Valuation clauses have been discussed at some length in an earlier chapter.[1] The stipulations discussed there are usually inserted in accordance with some special agreement and frequently differ from the one quoted above. The agreement under consideration provides that the goods shall be valued at "amount of invoice, if any; otherwise, at cash market value on date and at place of shipment." "Invoice" means commercial, not consular, invoice,[2] *i.e.*, the document sent by a seller to a buyer describing the goods and stating the price; and invoice cost or value means the amount stated therein as the selling price.[3] If the goods shipped have been sold and are in course of delivery, there probably will be an invoice, but if the assured is shipping the goods from one of his places of business to another, it is quite possible that there will be no such document. In such event it is agreed that the merchandise is to be valued at "cash market value on date and at place of shipment," *i.e.*, the market value,[4] or the price obtainable for the property when offered for sale by one who desires to sell

[1] Sec. 17.

[2] *The Ansaldo San Giorgio I*, 3 Fed. Supp. 579, 1933 A.M.C. 402.

[3] An invoice is a written account of the particulars of merchandise sent to a purchaser, consignee or factor with the value or price and charges annexed. *Stone v. First Nat. Bank*, 100 Ore. 528, 560, 198 Pac. 244, 245 (1921); *Cobb. v. Ins. Co.*, 78 S.C. 388, 58 S.E. 1099 (1907). Invoice price or invoice value is the amount at which the goods are invoiced to the purchaser, *i.e.* the cost or value of the property at the shipping point. *Larkin v. N.Y. Cent. Ry. Co.*, 162 N.Y. Supp. 870, 98 Misc. 446 (1917); *Knopfler v. Flynn*, 135 Minn. 333, 160 N.W. 860 (1917). In *Anchor Line v. Jackson*, 9 Fed. (2nd) 543, 1926 A.M.C. 221, it was said that invoice value may differ from invoice price if the terms of sale require discounts to arrive at present value. If there is no invoice in fact, these terms may mean prime price or cost or value at shipping point. *Sturm v. Williams*, 38 N.Y. Super. 325, 342 (1874); *Pierce v. Southern Pac. Co.*, 47 Pac. 874 (Calif.) (1897).

[4] *Frick v. United Firemen's Ins. Co.*, 218 Pa. 409, 67 Atl. 743 (1907).

but is not compelled to do so and bought by one who desires to purchase but is not compelled to do so.[1]

The co-insurance part of the stipulation does not provide literally for co-insurance. In form it limits the underwriter's liability. It says that, as respects the contents of each truck, the insurer will be liable only for that proportion of the loss or damage that the sum insured on the contents of the truck bears to the total value of goods on the truck. In other words, if a person insured for $10,000 has a truck on which are goods valued at $15,000 and there is a loss of $5,000, the assured will recover 10,000/15,000 or ⅔ of $5,000. The result is that the assured is a co-insurer to the extent of one-third of the loss. In order to recover, the assured must, of course, show the value of the lost goods and the value of all the goods on the truck at the time of loss.[2]

63c. *Risks Insured.*—The risks insured against include most of those covered by the transportation policy. Some companies list all the risks on the face of the policy, while others give a limited coverage in the basic policy and extend the coverage by endorsements. While the transportation policy insures against fire and lightning, the motor transit policy insures against fire, "including lightning, self-ignition and internal explosion of the conveyance." Cyclone, flood, tornado, and the collapse of bridges, as well as perils of the sea and similar risks while the trucks carrying the insured goods are on ferries, are usually included. Upset and collision, excluding loss or damage caused by coming in contact with any portion of the road bed or by striking rails or ties of street, steam, or electric railroads, or by coming

[1] *Travelers Indem. Co. v. B. & B. Ice Co.*, 248 Ky. 443, 58 S.W. 640 (1933).

[2] *St. Nicholas Laundry Corp. v. Glens Falls Ins. Co.*, 249 N.Y. Supp. 121, 139 Misc. 306 (1930).

in contact with any stationary object in backing for loading or unloading purposes, are also among the risks customarily covered. So, also, is theft of an entire shipping package, unless the theft be committed by an employee of the assured.[1]

63*d*. *Lock Warranty.*—If a shipper owns trucks of good construction with bodies which are entirely closed and provided with suitable locks he can sometimes obtain a reduction of the premium on the theft coverage by warranting that the trucks will be kept locked. This warranty is often a part of the theft endorsement and reads as follows:

> Provided, however, that for and in consideration of the reduced rate at which this endorsement is accepted, it is warranted by the Assured that the above described truck or trucks are equipped with entirely enclosed body or bodies of good construction, and provided with suitable lock or locks, and this Insurance Company shall be liable in case of loss by theft, as hereinbefore provided, only while the property insured is contained in the above numbered truck or trucks and only while such truck or trucks are securely locked.

Under this clause the owner cannot recover for a loss which occurs while the truck is not locked.[2]

63*e*. *General Clauses.*—Many of the stipulations of a general nature which appear in the motor transit policy are identical with, or so similar to, those discussed in Chap. III that discussing them here would be mere repetition. The principal differences are to be found in the "other insurance" clause (which in some policies provides for co-insurance and in others permits the underwriter to avoid the policy if there is other insurance), and in the stipulation respecting reinstatement of the policy.

[1] See Chap. II for a discussion of these risks.

[2] *McCormick v. Potomac Ins. Co.*, 255 N.Y. 302, 174 N.E. 689 (1931).

63*f*. *Reinstatement.*—Sometimes the reinstatement clause resembles that used in the transportation policy[1] but more often the stipulation in the motor truck policy is as follows:

> Every claim paid hereunder reduces the amount of insurance on the truck in respect to which the disaster occurred by the sum so paid, unless the same be reinstated by payment of additional premium thereon at pro rata rates.

The clause used in the transportation policy provides for immediate automatic reinstatement. The assured agrees to pay an additional premium, but the collection of the premium is left to a later date. Under the owner's motor transit policy the amount of insurance is reduced by every payment of a loss, *unless* the assured pays an additional premium to reinstate the amount by which the policy is reduced. In other words, an assured with $10,000 insurance who receives a payment of $2,000 for a loss, has then only $8,000 of insurance. It is then optional with him to reinstate the amount paid for the rest of the term by paying the additional premium. Unless he pays the additional premium, he is insured for $8,000 only.

63*g*. *Payment of Loss.*—In addition to the stipulations discussed above, there is in many of the motor truck policies a rather detailed agreement with respect to payment of losses. The stipulation commonly used is as follows:

> Unless the merchandise insured hereunder is valued at amount of invoice, in which case this basis of value shall apply, this Company shall not be liable beyond the cash market value of the property on date and at place of shipment, and the loss or damage shall be ascertained or estimated according to such value with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost the Assured to repair or replace the same with

[1] See sec. 53.

material of like kind and quality; said ascertainment or estimate shall be made by the Assured and this Company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this Company is liable pursuant to this Policy shall be payable sixty days after due notice, ascertainment, estimate and satisfactory proof of the loss have been received by this Company in accordance with the terms of this Policy. It shall be optional, however, with this Company, to take all or any part of the articles at such ascertained or appraised value and also to repair or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice within thirty days after receipt of the proof herein required, of its intentions so to do; but there can be no abandonment to this Company of the property described.

This clause must be read in connection with the valuation clause referred to above. The latter is an agreement that the goods are to be valued at the amount of invoice, if there is an invoice, and otherwise at cash market value on the date and at the place of shipment. The payment-of-loss clause provides a limit of liability where the goods are not valued at amount of invoice. In such cases it is agreed that the insurer shall not be liable beyond the cash market value "with proper deduction for depreciation," and that the company's liability shall in no event exceed what it would cost the assured to repair or replace the lost or damaged goods with material of like kind and quality. In other words, the insurer is not required to do more than make the assured whole, but the burden is on the insurer to show that the cost of replacement is less than the actual cash value.[1]

It is then provided that when the amount of loss has been determined, that sum shall be payable 60 days after due notice, ascertainment, estimate, and satisfactory proof of loss have been received by the insurer. The

[1] *Home Ins. Co. v. Sullivan Mach. Co.*, 64 Fed. (2nd) 765 (1933).

payment-of-loss clause provides also that the company may at its option take all or a part of the insured goods at the ascertained or appraised value and may repair or replace them with others of like kind and quality on giving notice within 30 days after receipt of proofs of loss. Clauses similar to this have been used for many years in the fire policy. They permit the company to avoid excessive claims and, in times of falling prices, to give the assured full indemnity with less expense than by making payment. A further sentence forbids an abandonment, an option often exercised under marine policies in cases of constructive total loss.

Other clauses provide for immediate notice of loss, filing proofs thereof within three months, and an appraisal if the parties cannot ascertain the loss or agree on its amount.[1]

64. Transportation Policy as a Basic Form.

There is no limit to the possible variations of the transportation policy when underwriters and brokers seek to meet the demands of various individuals or trades, or attempt to write policies applicable to the various commodities which are subject to the risks of transportation. While many of these variations are applicable only to the parties for whom they are prepared, a few of them have become more or less standardized as riders or endorsements to be attached to the transportation policy.

Special forms of riders are in general use for the insurance of contractors' equipment, garments in course of manufacture, goods temporarily in warehouses, mer-

[1] Submission to appraisers is a lawful and commendable method of settling controversies of this nature, and their award will be considered as presumptively correct. *Aetna Ins. Co. v. Murray*, 66 Fed. (2nd) 289 (1933).

chandise shipped to department stores, and numerous other kinds of property. These forms are customarily attached to the transportation policy, which then becomes applicable only to the extent that it is not in conflict with the terms of the endorsement. Thus the transportation policy which was developed from the practice of extending the marine policy to cover land risks[1] is now in turn used as a basic policy for the attachment of endorsements extending the coverage to special property and special risks.

[1] See *Kratzenstein v. Western Assurance Co.*, 116 N.Y. 54, 22 N.E. 221 (1889), where the goods carried by a traveling salesman were insured under a marine policy on cargo with an appropriate endorsement. The practice has not entirely ceased. *Genez v. Union Marine Ins. Co.*, 236 A.D. 594, 260 N.Y. Supp. 277 (1932), rev. 262 N.Y. 121, 186 N.E. 415.

CHAPTER V

THE FLOATER POLICIES

65. Floater Policies Defined.

Floater policies, or floating policies as they were formerly and sometimes still are called, have been written in one form or another for many years. In marine insurance the term has a meaning synonymous with the term "open policy,"[1] or at least very similar to it. Arnould says that floating policies are used extensively by merchants to cover all the property which they expect to have at risk within certain limits of space and time. When such a policy is issued, says Arnould, it will attach automatically on all shipments comprised within its terms.[2] In other words, a floating policy in marine insurance is an open or running policy under which declarations of shipments are made from time to time, and premiums become payable as and when agreed. By analogy any similar policy covering goods shipped or to be shipped by the conveyances mentioned in an inland marine policy may be and often is called a floater policy. Thus it is not uncommon to refer to the transportation policy as a transportation or transit floater and to apply the name "floater" to the parcel post and registered mail policies.

There is, however, another sense in which this term is used. Joyce describes the floating policy as one covering a class of goods which from their fluctuating, changing nature differ as to specific articles or make description

[1] Arnould, 11th ed. sec. 9.

[2] *Id.*, sec. 186.

difficult because they fluctuate or shift as to quality or location.[1] Cooley says that floating policies are similar to blanket policies, and that the two terms are to a certain extent interchangeable, as each is intended to cover the margin not insured by other policies.[2] The New York Court of Appeals many years ago described such a policy as follows:

> This is what is called a floating policy intended to cover property or value which cannot well be covered by specific insurance from the circumstance that it is changing in quantity or location. The ordinary purpose of such a policy is to supplement specific insurances and to cover values not covered by them. Here the plaintiffs' property would sometimes be in one warehouse and sometimes in another, and sometimes on wharves or in transitu over the streets, and sometimes above the specific insurances and sometimes under them in value. Hence, the necessity for this floating policy to attach to the property wherever it might be, and in all cases when it happened to exceed the specific insurances.[3]

Joyce and Cooley and the Court of Appeals more nearly describe the floater policy known to inland marine insurance than does Arnould who, of course, was considering only marine insurance. While in inland marine insurance the floater policy is not generally regarded as a blanket policy, it is true that the property which it insures is often in a position where it cannot be covered by specific insurance. For that reason the floater policy may be said in some instances to supplement specific insurance. Some of the floaters, such as the fur and jewelry policies, cover only the articles specifically listed in the policy schedule and do not provide for a change in

[1] Joyce, 2nd ed. sec. 157. That there are two kinds of floating policies was recognized in *Peabody v. Liverpool Ins. Co.*, 171 Mass. 114, 50 N.E. 526 (1897).

[2] Cooley, *Briefs on the Law of Insurance*, p. 780. See also May, *The Law of Insurance*, 4th ed. sec. 435.

[3] *Fairchild v. L. & L. Fire Ins. Co.*, 51 N.Y. 65 (1872).

quantity of the goods. Such policies are floaters only in the sense that they cover the insured property in various locations or in transit. As a matter of fact the term "floater policy" in inland marine insurance is used so loosely and covers so numerous a variety of insurance contracts that it can best be understood by considering the policies separately.

66. Two Main Classes.

Policies of this nature fall into two main classes. First, there are the policies which insure the personal property of individuals, and, secondly, the policies which insure property used in the business or profession of the assured. The term "personal property" is not used here to distinguish the articles insured from real property but rather to indicate belongings of a personal nature such as clothing, furs, jewelry, and other articles of a personal nature frequently worn or used by the assured. In the first class are to be found the jewelry-fur floater, the fur floater, the fine arts floater, the gold and silverware policy, the shotgun policy, the personal effects floater, the tourist's baggage floater, the personal property floater, and policies insuring cameras, wedding presents, stamp collections, and musical instruments. In the second class are the jeweler's block policy, the dealer's fine arts policy, the garment floater, the commercial traveler's policy, the theatrical policy, the horse and wagon policy, the physicians and surgeons' policy, and the radium floater.

67. Jewelry-fur Floater Policy.

It has been stated in an earlier chapter that the growth of inland marine insurance has been due in part to the increase and diffusion of wealth.[1] That increase and

[1] Chap. I, sec. 6.

diffusion of wealth have resulted naturally in a wider use of articles of luxury, among them such things as jewelry and furs. As the normal use of these articles requires them to be carried frequently from the residence of the owners, the latter have not been satisfied with insurance which covers only in a definite location or against named risks, but have demanded policies covering their property against practically all risks wherever it may be. In order to meet this demand, modern underwriters have designed the *jewelry-fur floater*, which is one of the most important policies of the personal floater group.[1]

67*a*. *Coverage and Risks.*—The jewelry-fur floater is written on a time basis, generally for one year, "on jewelry and/or furs, as per schedule attached, being property of the assured and members of his or her family of the same domicile, against all risks of loss or damage, except as hereinafter excluded, whilst in all situations." Questions as to what articles are comprised in the term "jewelry" and "furs" are avoided by describing the insured articles in a schedule inserted in, or attached to, the policy. The coverage includes only the specific articles so mentioned, when they are the property of the assured or the members of his family. It does not include the property of servants or other persons residing with the assured and includes the property of members of the assured's family only if they are "of the same domicile."

Domicile has been defined as the place where a person has his true, fixed, and permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning.[2] It is his permanent home

[1] I.M.U.A. form.

[2] *United States v. Curran*, 299 Fed. 206 (1924).

as distinguished from transitory residences.[1] He may have several residences but only one domicile at a time.[2] If he has more than one residence, his domicile will be the one that he himself selects or deems to be his home, or which appears to be the center of his affairs or where he votes or exercises the rights of a citizen.[3]

The policy covers, wherever the property may be, against "all risks of loss or damage," a provision that has already been discussed,[4] with exclusions of losses caused by gradual deterioration, moth, vermin, inherent vice, war, invasion, hostilities, rebellion, insurrection, confiscation, or risks of contraband or illegal transportation or trade.

In order to make the contract simple and easily understood by persons unfamiliar with insurance matters, the conditions of the policy have been limited to those considered necessary for the proper protection of assured and insurer. The first of these provides:

> Where any insured item consists of articles in a pair or set, this policy is not to pay more than the value of any particular part or parts which may be lost, without reference to any special value which such article may have as part of such pair or set; nor more than a proportionate part of the insured value of the pair or set.

This clause is similar to those with respect to machinery and labels in the transportation policy.[5] Its purpose obviously is to prevent the assured from claiming that a pair or set of articles has become a total loss by reason

[1] *In Re Sedgwick*, 223 Fed. 655 (1915).

[2] *Hunter v. Bremer*, 256 Pa. 257, 266, 100 Atl. 809 (1917).

[3] *McHenry v. State*, 119 Miss. 289, 300, 80 So. 763, 767 (1919). The word "domicile" has caused much trouble to the courts in various branches of the law. Much depends on intent, but intent alone is not sufficient. *Hayward v. Hayward*, 65 Ind. App. 440, 115 N.E. 966 (1917). See *Words and Phrases* for a collection of cases on the subject.

[4] See sec. 37.

[5] See secs. 44 and 45.

of the loss of a part. Thus if one of a pair of earrings or one stud in a set of studs is lost, the assured can collect only the value of the piece lost, without reference to the effect of the loss on the owner's use of what remains.

67*b*. *Payment.*—Another stipulation in the policy provides:

> All adjusted claims shall be paid or made good to the assured within thirty days after presentation and acceptance of satisfactory proofs of interest and loss at the office of this Company.

While insurers generally do not insist on waiting thirty days to pay or to make good, this clause permits them, if they wish, to withhold payment for that length of time after proofs of loss have been accepted on "adjusted claims."[1] An adjusted claim is one for which liability in a definite amount is agreed.[2] It has been held that the words, "make good," as used in this clause are applicable only to adjusted claims and do not give the insurer the right to replace lost articles.[3] It follows that unless the assured agrees to accept a replacement the underwriter cannot compel him to do so.

67*c*. *Notice, Proofs of Loss, Suit, etc.*—The policy contains also a bailee clause, an agreement for an immediate report of a loss and the filing of proofs within 90 days, a 12-months suit clause, and a stipulation regarding cancellation. These terms are similar to those to be found in the transportation policy.[4]

[1] *Robinson v. Sun Ins. Office*, 152 N.Y. Supp. 1022, 90 Misc. 390 (1915); *Second Soc. v. Royal Ins. Co.*, 221 Mass. 518, 109 N.E. 384 (1915).

[2] *Staats v. Pioneer Ins. Assn.*, 55 Wash. 51, 104 Pac. 185 (1909); *City of Longview v. Capps*, 123 S.W. 160 (Tex.) (1909).

[3] *Butterworth v. Home Ins. Co.*, N. Y. Law Journal, April 23, 1934, p. 1953.

[4] See Chap. III, secs. 46 to 48, 52, 55.

68. Fur Floater.

If a person wishes to insure furs only, he may obtain a policy similar in most respects to the jewelry-fur floater. This policy, called the *fur floater*, omits reference to the loss of one of a pair or set for the reason that furs do not come in pairs or sets, and contains an exclusion for "damage sustained due to any process or while being actually worked upon and resulting therefrom." Otherwise the two policies provide the same coverage on the same conditions.[1]

69. Fine Arts Policy.

Another personal property floater is provided for the owners of fine arts. This contract, written on a time basis, and known as the *fine arts policy* is used for the insurance of all kinds of *objets d'art.*[1] A space is provided in the form for a description of the articles insured. Like the jewelry-fur floater the policy insures against all risks, with certain exclusions.[2] The only stipulation which differs materially from those heretofore considered is the other insurance clause. This clause provides that the insurer shall be liable only for its pro rata contribution with other insurers, if there is "any other similar or identical insurance on the property insured hereunder."[3]

70. Gold and Silverware Policy.

The *gold and silverware policy* is merely a form specially designed to insure named articles made of gold and silver against all risks, with certain exceptions. The contract does not contain any clauses of importance not already considered.

[1] I.M.U.A. form.

[2] See sec. 37 for meaning of "all risks."

[3] See sec. 42 for a discussion of other insurance.

71. Shotgun Policy.

The *shotgun form* in common use provides insurance "on shotguns and accessories as per schedule." A space is provided for a description of each article and the amount of insurance agreed on. The property of members of the assured's family may be included, as well as that of the assured himself. The contract is "against all risks of loss or damage during transportation or otherwise."[1] In other words the property is covered wherever it may be. The exclusions include "loss or damage caused by explosion, rust, fouling, marring, scratching, wear and tear, and gradual deterioration," and also those risks enumerated in the customary war, strikes and riots clause.

In case of loss the insurer agrees to pay "the actual loss sustained" not exceeding the amount mentioned in the schedule, or to replace the article or restore it to its former condition. The policy contains a number of general stipulations resembling those of the transportation policy.[2] Some forms require a report of loss or damage within 72 hours after the assured learns of his loss, rather than the "immediate notice" provided in the transportation form.[3]

72. Personal Effects Floater.

The *personal effects floater* insures "personal effects such as are usually carried by tourists and travelers, belonging to and used or worn by the assured and/or his wife and their unmarried children permanently residing together."[4] In this respect it differs from the policies already discussed in this chapter, which insure

[1] See sec. 37 for meaning of "all risks."
[2] See Chap. III.
[3] See sec. 47 for necessity of giving notice.
[4] I.M.U.A. form.

only the property specifically described therein. The term "personal effects" does not mean personal property in a broad sense but articles associated with the person, *i.e.*, having an intimate relation to the person of the possessor;[1] and it has been held that the words, "usually carried by tourists and travelers," do not limit the coverage to such articles as most tourists and travelers usually carry but include such personal effects as a person owning them would carry with him while touring or traveling.[2] Thus a removable dental bridge stolen from the assured's desk at his office has been held to be within the description of articles insured by the policy,[3] but an engagement ring carried in the pocket by a man who intended to sell it was held not to be within the coverage.[4]

72*a*. *Excluded Articles.*—Certain articles are expressly excluded. The list is too long to enumerate here, but it includes such things as automobiles, boats, and the like, valuable papers, furniture, animals, merchandise and "any property specifically or otherwise insured."[5] In fact the policy is designed, as its name indicates, to insure effects pertaining to, or associated with, the person of the assured, such as clothing and the articles customarily carried by the assured in his trunks or bags while traveling rather than personal property generally.

72*b*. *Risks Insured and Excluded.*—The property covered is insured against "all risks of loss or damage,"[6] but these words are followed by a sizable list of exclu-

[1] *Ettlinger v. Importers' and Exporters' Ins. Co.*, 247 N.Y. Supp. 260, 9 Misc. 743 (1931).

[2] *Ettlinger v. Ins. Co., supra.*

[3] *Id.*

[4] *Gross v. Globe & Rutgers Ins. Co.*, 256 N.Y. Supp. 570, 142 Misc. 918 (1932).

[5] As to the meaning of "specific insurance" see sec. 42,*n*.

[6] See sec. 37.

sions some of which, because they mention property not insured, might logically be listed with the excluded articles mentioned above. The policy does not insure any of the assured's belongings while they are on the premises of the domicile of the assured,[1] except by special endorsement, or in storage warehouses. It does not insure against gradual deterioration, moth, vermin, inherent vice, or against breakage of brittle articles unless caused by thieves, fire, or accident to conveyances. Losses due to war and similar causes are also excluded. The coverage on jewelry, watches, and furs is limited to 25 per cent of the total amount of insurance and to $500 per article; and the property of students on college premises or in dormitories or fraternity houses is excluded from the coverage, unless included by a special endorsement. Thus while called an all risks policy the personal effects floater is really somewhat less than that. The general conditions do not contain any stipulations substantially different from those already considered.

73. Tourist Baggage Policy.

The *tourist baggage policy* is similar to the personal effects floater but is written on a more restricted form.[2] Instead of insuring against all risks, it insures against named perils only, with exclusions similar to those in the personal effects policy. The contract covers only the classes of articles specifically listed in the policy. Such a policy, it has been held, cannot be extended by interpretation to include articles not falling within the enumerated classes.[3] Thus a set of false teeth is not to be

[1] See sec. 67*a* for meaning of domicile.

[2] I.M.U.A. form.

[3] *Rubin v. Globe & Rutgers Ins. Co.*, 196 N.Y. Supp. 657, 119 Misc. 532 (1922); *Kahn v. Aetna Casualty & Surety Co.*, 99 N.J.L. 6, 123 Atl. 97 (1924).

deemed insured by a policy covering personal effects including toilet articles, scientific apparatus, and jewelry, or by a policy on "gold and silverware, watches, etc., and other merchandise of like character."[1] On the other hand the exclusions are not to be restricted beyond their natural meaning. For example, an exclusion for theft of robes or coats while in an automobile means all robes and coats and not merely automobile robes and coats.[2]

73*a*. *Risks Covered.*—The risks insured against by the policy are fire, lightning, and the risks and perils of transportation and navigation, while in the custody of certain classes of carriers; stranding, sinking, burning or collision of a yacht on which the assured may be a guest; collision while contained in an automobile; theft while in the custody of a common carrier; and the theft of trunks, traveling bags, or other shipping packages with their contents, from rooms occupied by the assured, or when checked in a hotel, boarding house, or public parcel room, provided the local police authorities are immediately notified on discovery of loss. The meaning of these clauses and the extent of the coverage afforded by them have been fully discussed in the chapter dealing with the transportation policy.[3] Although the policy is described as a tourist baggage policy it will not be construed so as to limit the insurance to "baggage" nor to losses incurred while touring, there being nothing in the policy but its name to indicate such restrictions of the coverage.[4]

[1] *Id.* See sec. 14 for other cases on property covered by description in policy.

[2] *Hall v. Royal Ins. Co.*, 204 N. Y. Supp. 823, 123 Misc. 152 (1924).

[3] Chap. II.

[4] *Ins. Co. of North America v. Samuels*, 31 Ga. App. 258, 120 S.E. 444 (1923), where a loss by robbery while in an automobile in the driveway of the assured's home was held covered.

74. Personal Property Floater.

A further policy of this nature, known as the *personal property floater*,[1] is available in some states. It insures "personal property (not pertaining to assured's business, profession or occupation) belonging to and used or worn by the assured and/or members of his or her family of the same domicile."[2] This policy is against all risks,[3] with certain exclusions, covers the insured property in all situations, with the exception of specified property which is covered only while "permanently located in summer, winter or country home." It insures the belongings of guests and servants, with certain limitations. Thus the coverage is somewhat broader than that furnished by the personal effects floater and the tourist baggage policy.

75. Cameras, Stamps, Wedding Presents.

Special forms of floater policies have been devised to insure cameras, stamp collections, and wedding presents, property which is likely to vary as to location, and the last two items of which are likely to fluctuate in amount. These three policies insure against all risks, with certain exclusions, and are written either as endorsements on the scheduled property floater[4] or as complete contracts with the conditions of the scheduled property floater

[1] Written by an endorsement prescribed by the I.M.U.A. and attached to the scheduled property floater. The scheduled property floater is a basic form of policy devised expressly for the attachment of riders or endorsements. The face of the policy provides spaces for the names of the parties, the term of the policy, etc. The back of the policy contains general conditions similar to those discussed elsewhere in this work. The property covered and the risks insured against are described in the endorsement.

[2] See sec. 67*a* for meaning of domicile.

[3] See sec. 37.

[4] See sec. 74, *n*.

incorporated therein.[1] They cover the property wherever it may be and are written on a time basis, the first two for not exceeding one year and the last for not over 90 days.

76. Musical Instruments.

An all risks policy on musical instruments, similar to the policies just discussed, is available. The companies writing this insurance generally write it as an endorsement to be attached to the scheduled property floater or to the transportation policy. While sometimes used to cover musical instruments belonging to commercial bands and orchestras, the policy is essentially a personal floater.

77. Jeweler's Block Policy.

The *jeweler's block policy*, one of the most important of the commercial floaters, is said to have originated in London and to have been devised for the purpose of including in one contract the numerous insurances which jewelers feel required to procure for adequate protection. As now written it may not furnish complete protection, but it comes very close to doing so.

This policy[2] differs somewhat in form from those heretofore considered. It begins with clauses which with the blank spaces filled would appear as follows:

WHEREAS John Doe of No. 500 Maiden Lane, New York City, hereinafter called the Assured, has made to this company a written proposal and declaration dated the 2nd day of January, 1934, which is attached hereto and made a part hereof, and which is hereby agreed to be the basis of this policy, and whereas, the assured hereby warrants the truth of each and every statement and particular contained therein,

[1] I.M.U.A. forms.
[2] I.M.U.A. form.

IN CONSIDERATION of such written proposal and declaration and of the stipulations and conditions and premium hereinafter provided, the New York Insurance Company hereinafter called the Company, DOES INSURE the Assured named herein for the term herein stated, and to an Amount not exceeding the Amount of insurance herein specified against loss of or damage to the property herein specified and upon the stipulations and conditions hereinafter contained.

The proposal and declaration, containing many statements about the insured's business, are made a part of the policy, just as the application for life insurance is usually made a part of the life policy. The statements made in the proposal are warranted to be true and, as they are expressly incorporated in the policy, they stand on the same footing as other warranties in the contract.[1] If they are found to be untrue, the underwriter may avoid liability for a loss,[2] provided he has not waived the breach of warranty.[3]

77*a*. *Property Insured.*—Following the clauses quoted above are provisions with respect to the term of the policy, the amount of insurance and the premium. The property insured is described as follows:

(*a*) Pearls, precious and semi-precious stones, jewels, jewelry, watches and watch movements, gold, silver, platinum, other precious metals, and alloys and other stock usual to the conduct of the assured's business, owned by the assured;

(*b*) Property as above described, delivered or entrusted to the assured, belonging to others who are not dealers in such property or not otherwise engaged in the jewelry trade;

(*c*) Property as above described, delivered or entrusted to the assured by others who are dealers in such property or otherwise engaged in the jewelry trade, but only to the extent of the assured's

[1] *First Nat. Bank v. Ins. Co. of North America*, 50 N.Y. 45 (1872).

[2] *Fell v. John Hancock Ins. Co.*, 76 Conn. 494, 57 Atl. 175 (1904); *Clemans v. Supreme Assembly*, 131 N.Y. 485, 30 N.E. 406 (1892).

[3] *Masonic Assn. v. Beck*, 77 Ind. 203 (1881).

own actual interest therein, because of money actually advanced thereon, or legal liability for loss of or damage thereto.

Thus three separate classes of property are insured. Paragraph *a* covers such property of the assured himself as falls within the above description,[1] and paragraphs *b* and *c* cover similar property belonging to others, when entrusted to the assured.[2] Paragraph *b* refers to owners (other than dealers) of such articles and is intended to furnish insurance on the property of the jeweler's customers while entrusted to him for one purpose or another. Similar protection was formerly afforded to other jewelers dealing with the assured, but in the form now in use the property of other dealers is protected only to the extent of the assured's interest arising from advances made or because of legal liability for loss or damage. Thus whenever property belonging to another dealer is lost or damaged while in the assured's custody, a question arises as to the assured's interest. If the assured has made advances on account of the purchase of the goods, the insurer is liable to the extent of those advances; or, if the property was lost or damaged under circumstances making the assured legally liable to the actual owner, the underwriter is bound to pay to the extent of such liability. In other words the assured is protected to the extent of his interest and liability; but the owner, if he be a dealer, must look to his own underwriters if he would be indemnified for his share of the loss. The "legal liability" of the assured may arise either from negligence or from contract. It matters not which, so long as the loss is one for which under the law the assured can be held liable.[3]

[1] See secs. 14 and 73 as to property covered by description in policy.

[2] Paragraph *b* is another instance of a bailee insuring for the bailor's benefit. See sec. 15.

[3] *Atlantic Basin Iron Works v. American Ins. Co.*, 250 N.Y. 322, 327, 165 N.E. 463 (1929); *Brooklyn Clothing Corp. v. Fidelity-Phenix Ins. Co.*,

77*b*. *Territorial Limits.*—Following the description of the property insured is a clause describing the territorial limits permitted by the policy.[1] The provision reads:

> The property above specified is covered while the same is in or upon any place or premises whatsoever in the United States of America, the Hawaiian Islands and Alaska (excluding the Philippines and/or any overseas possessions) and Canada, and also . . . while being carried or in transit by land or sea between any ports or places within the above limits and while being carried or in transit between such ports or places and ports or places in Europe (excluding Russia, Poland, Spain and Turkey).

As this clause permits the insured goods to be "in or upon any place or premises whatsoever" in the countries named, it follows that the goods are insured when entrusted to others as well as while on the assured's own premises.[2]

77*c*. *Risks Covered.*—Like most of the floater policies, this contract is against all risks, with certain enumerated exclusions.[3] The words of the clause are:

> This policy covers loss of and/or damage to the above described property or any part thereof arising from any cause whatsoever except as hereinafter mentioned, viz:

Then follows a long list of exclusions too numerous to quote in full. These eliminate from the coverage all loss or damage due to dishonesty of the assured or his employes, or to working on the property, or to war, strikes and riots, or storms while on land, or to breakage

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205 A.D. 743, 200 N.Y. Supp. 208 (1923). See Chap. VI as to legal liability generally.

[1] As to the general effect of such clauses, see sec. 41.

[2] *Agricultural Ins. Co. v. Rothblum*, 265 N.Y. Supp. 7, 147 Misc. 865 (1933).

[3] See sec. 37 for discussion of coverage afforded by all risks insurance.

with certain exceptions, or unexplained shortages. The insurer is also exempt from liability for loss or damage incurred while any of the insured goods are being worn; while they are at a public exhibition; or while they are in an automobile, motorcycle or other vehicle, unless attended by the assured, a permanent employee or some person whose sole duty it is to attend the vehicle.[1] Losses incurred while in transit by express (unless in sealed packages by railway express), or by mail unless registered, or by freight are excluded. Except for these and a few other less important exceptions, the property is covered against all risks, wherever it may be within the limits of space mentioned above. The exclusions are regarded as conditions subsequent. As the insurance is against loss or damage "arising from any cause whatsoever," it is only necessary to show that a loss has occurred in order to make out a case against the insurer. The burden is on the insurer to produce proof that the loss falls within one of the exceptions.[2]

77*d*. *Limitation of Liability.*—The policy contains a number of clauses limiting the liability of the underwriter in case of loss or damage. Under one of these clauses the assured can recover only 80 per cent of losses "from his windows resulting from window smashing"[3] A further clause limits the insurer's liability to "actual cash value"[4] or the cost of repairs or replacements. As to

[1] Under this clause it has been held that if the permanent employe "is not actually within or on the automobile or so near thereto as to be able to observe a theft of the contents, he shall not be deemed to be in attendance at the time the loss occurs." *William Kinscherf Co. v. St. Paul Ins. Co.*, 234 A.D. 385, 254 N.Y. Supp. 382 (1931).

[2] *Agricultural Ins. Co. v. Rothblum*, 265 N.Y. Supp. 7, 147 Misc. 856 (1933).

[3] See *Goldner v. U.S. Fid. & Guar. Co.*, 226 A.D. 560, 235 N.Y. Supp. 420 (1929), affd. 252 N.Y. 553, for case sustaining exclusion of all loss due to window smashing.

[4] See sec. 63*b* as to the meaning of this term.

pledged articles, liability is limited to "the amount actually loaned and unpaid" plus interest. Provision is also made for certain agreed outside limits for property in transit and elsewhere than on the assured's premises. If claim is made on the assured for loss of property held by him, it is agreed that the insurer may adjust the claim with the owner of the goods and at its option may conduct and control the defense if legal proceedings are commenced.

77*e*. *General Conditions.*—The general conditions or stipulations of the jeweler's block policy are more extensive and more detailed than those appearing in the policies previously considered. The contract contains the usual agreements with respect to misrepresentation and concealment, payment, the commencement of suits, and suing and laboring together with the customary bailee clause. It contains also detailed clauses regarding other insurance, notice and proofs of loss, subrogation, reinstatement, assignment, waiver, and cancellation. Similar but less extensive stipulations inserted in the transportation policy have been discussed at some length above.[1] In addition to these clauses, some of which have been adapted from the standard fire policy, the contract contains two important warranties and an agreement with respect to examination under oath.

77*f*. *Warranties.*—One of the warranties is "that the Assured keeps a detailed and itemized inventory of all property, including traveling salesmen's stocks, in such manner that the exact amount of loss can be accurately determined therefrom by the Company." This warranty is very important when a loss occurs, for if the insured property has disappeared it is almost impossible for the assured or the insurer to determine with any degree of accuracy the extent of the loss unless such an inventory

[1] See Chap. III.

be kept. By another clause the assured warrants that he will maintain, in so far as is within his control, during the life of the policy, a watchman and the protective devices described in his proposal form. Warranties of this nature have been in use for many years in fire and marine policies and in some jurisdictions are strictly enforced.[1] Courts favoring strict enforcement hold that the warranty imputes absolute verity of the statements made,[2] and regard a strict compliance therewith as a condition precedent to recovery.[3] Other courts take the position that the watchman's warranty must be given a "reasonable" rather than a strict construction.[4] The agreement in the jeweler's block policy to maintain a watchman and certain protective devices is less onerous than that in many policies, where the assured agrees absolutely to keep a watchman on the premises at all times.

77*g*. *Examination under Oath.*—It is agreed that the assured will submit, and will cause other interested persons to submit, to examinations under oath with respect to all matters connected with a claim, and will produce for examination all account books, bills, invoices, and so forth. It is further agreed that such examinations shall not constitute a waiver of any defense which the insurer would otherwise have but shall be deemed to have been carried on without prejudice. These clauses are similar to those on the same subject which have been

[1] *First Nat. Bank v. Ins. Co. of North America*, 50 N.Y. 45 (1872); *Whealton v. Aetna Ins. Co.*, 185 Fed. 108 (1911); *Shamrock Towing Co. v. American Ins. Co.*, 9 Fed. (2nd) 57 (1925).

[2] *Wolowitch v. Nat. Surety Co.*, 152 A.D. 14, 136 N.Y. Supp. 793 (1912).

[3] *Cary v. Home Ins. Co.*, 199 A.D. 122, 191 N.Y. Supp. 529 (1921), affd. 235 N.Y. 296, 139 N.E. 274.

[4] *Hanover Fire Ins. Co. v. Gustin*, 40 Neb. 828, 59 N.W. 375 (1894); *McGannon v. Miller's Nat. Ins. Co.*, 171 Mo. 143, 71 S.W. 160; *Id.*, 127 Mich. 636, 87 N.W. 61 (1902); *Ins. Co. v. Metcalf*, 59 Kan. 383, 53 Pac. 68 (1898)

a part of the standard fire policy for many years. They are binding on the assured, and full compliance so far as possible is indispensable to a right of action on the policy;[1] *i.e.*, the assured must answer all material questions[2] and produce all books and papers required if possible.[3] The insurer on its part must give timely notice of the proposed examination and appoint a reasonable time and place therefor.[4]

78. Fine Arts Dealer's Policy.

The *dealer's form* of the fine arts policy is similar in many respects to the jeweler's block policy, which has just been discussed.[5] It is constructed by attaching one of two printed endorsements to the fine arts floater used for others than dealers,[6] and thus contains all the stipulations of that contract except those that are modified by the endorsement. The two endorsements are identical in most respects. Instead of insuring specific property, as the personal fine arts floater does, they provide insurance

on antiques and objects of art of every nature and description, property of the assured, or held by them in trust, or on memorandum, or on consignment, or sold but not delivered or removed, or on joint account with and belonging to others and for which the assured may be liable in event of loss.[7]

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[1] *O'Brien v. Commercial Fire Ins. Co.*, 63 N.Y. 108 (1875); *Firemen's Fund v. Sims*, 115 Ga. 939, 42 S.E. 269 (1902).

[2] *Tutus v. Glens Falls Ins. Co.*, 81 N.Y. 410, 416 (1880).

[3] *Seibel v. Lebanon Ins. Co.*, 197 Pa. 106, 46 Atl. 851 (1900); *Langan v. Royal Ins. Co.*, 162 Pa. 357, 29 Atl. 710 (1894); *American Cent. Ins. Co. v. Huston*, 261 S.W. 158 (Tex.) (1924).

[4] *Murphy v. Mercantile Co.*, 61 Mo. App. 323, 333 (1895); *Fleisch v. Ins. Co.*, 58 Mo. App. 597 (1894); *Jones v. Howard Ins. Co.*, 117 N.Y. 103, 22 N.E. 578 (1889).

[5] I.M.U.A. form.

[6] See sec. 69.

[7] See secs. 15 and 77*a*.

Thus the policy covers fluctuating property, not only that belonging to the assured but also the property of others in the possession of the assured under practically any kind of arrangement the parties may agree to. In addition to covering the assured's property and that of others of which he is the bailee, it insures property held "on joint account with . . . others and for which the assured may be liable in event of loss." In short, it insures the policy-holder against loss or damage to his own works of art and to any other similar property held by him or for which he may be held liable in case of loss.

78*a*. *Risks and Limitations.*—Like most of the floater policies the fine arts floater insures against "all risks of loss or damage" with certain definite exclusions.[1] The exclusions resemble closely those appearing in the jeweler's block policy. A space in the policy permits the parties to enter into such agreement as they wish with respect to the limits of the insurer's liability. Different limits may be agreed on for property "at all locations combined," "at the premises of the assured," at other locations, and in transit by various kinds of carriers. The limits agreed on vary, of course, in accordance with the assured's requirements. In addition to the definite limits to which the parties may agree, stipulations similar to those in the jeweler's block policy limit the insurer's liability to the "actual cash value"[2] and to a fair proportion of the total value of a pair or set in case of partial loss or damage. The insurer reserves the right to repair or replace and, when the property of others is lost or damaged, to negotiate directly with the owners.

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[1] See sec. 37 for discussion of the all risks coverage. The exclusions are conditions subsequent, sec. 77*c*.

[2] See sec. 63*b*.

78*b*. *Other Stipulations.*—As was stated above, the policy contains all the general stipulations appearing in the personal fine arts floater except as these are modified by the dealer's endorsement. The assured agrees that in the event of loss or damage he will give immediate notice to the insurer, will protect the property from further damage, and within 60 days will render a sworn proof of loss containing certain information. If required, he is to submit to examination under oath.[1] Further agreements with respect to "other insurance," payment of losses, subrogation and cancellation, together with the usual bailee clause, all of which have been discussed above, appear in the policy.[2]

The principal difference between the two endorsements is that one is written for a flat amount and contains an automatic reinstatement clause, while the other is written on a reporting basis and provides for the payment of monthly premiums based on the values at risk. The former, instead of requiring monthly reports, provides for keeping an itemized inventory with all records open to the insurer's inspection.

When written on a flat basis, one clause provides that the insurer is not liable for a greater proportion of any loss than the sum insured bears to the actual cash value of the insured property nor for more than the proportion which the policy bears to the total insurance on the property.[3] In other words, under this clause the insurer is liable only for a pro rata payment when the property is under insured or there is other or double insurance. Another clause provides that if the property is covered by other insurance, the fine arts floater shall be excess insurance. The two clauses are inconsistent.

[1] See sec. 77*g*.
[2] See Chap. III.
[3] See secs. 63*b* and 63*g*.

79. Garment Contractor's Floater.

Another well known commercial floater is issued to persons engaged in the garment trade and is known as the *garment contractor's floater*. The name is not a happy one for the policy is not issued to contractors but to those who do business with contractors. Many of these manufacturers of wearing apparel do not perform on their own premises all the various steps that are necessary to make completed garments. The custom is to send the goods to specialists who do some particular part of the work and return the goods to the owner, who may then send them to still another specialist for further work. Or, the work which the first contractor agrees to perform may be such as to require him in turn to entrust part of it to a sub-contractor. During such times as the garments are off the owner's premises, they are of course not insured by his ordinary fire and casualty policies. In order to furnish coverage for such goods while they are out of the owner's custody, underwriters have devised the garment contractor's floater.

This policy is written as an endorsement on the transportation policy, which is so worded as to cover only in transit between the premises of the assured and the premises of the contractor or sub-contractor.[1] The endorsement provides an extension to cover against named risks "while temporarily detained during processing on premises of contractors and/or sub-contractors." Thus the goods are insured from the time they are taken from the owner's premises until they are returned, when they come again under the protection of fire and casualty policies.

79*a*. *Risks and Exclusions.*—The policy is written against fire and lightning, water damage, burglary, and hold-up, each of which is defined in the policy. It may

[1] I.M.U.A. form.

be extended to include also direct loss or damage caused by malicious mischief, rioters, strikers, or explosion (other than boiler explosion); but not by delay, deterioration, loss of market, or confiscation or destruction by the Government. A further extension is sometimes added to cover theft[1] while on the premises of contractors or sub-contractors, with exclusions for conversion, dishonesty of assured or the contractors or their employes, mysterious or unexplained disappearance, or shortage disclosed by inventories, or other unaccountable loss where there is no evidence that the loss was occasioned by the perils specifically insured against.

79*b*. *Conditions of the Policy.*—The general clauses of the garment contractor's floater are similar in most respects to the stipulations of the policies which have been considered above. The agreements with respect to notice and proofs of loss, concealment and misrepresentation, agency, cancellation, submission to examination under oath, co-insurance, limitation of liability, reinstatement, other insurance, and so forth differ only slightly from clauses on the same subjects already discussed. However, in so far as they differ from the printed clauses in the transportation policy to which they are attached, the garment floater clauses prevail.

80. Commercial Traveler's Policy.

The *commercial traveler's policy* is the modern successor of what was at one time called by underwriters and textbook writers the "drummer floater."[2] The purpose of the policy is to insure the property of the assured in the custody of his salesmen while they are traveling, a period when goods carried by them would not be covered

[1] See sec. 35.

[2] See Joyce, vol. I, sec. 157 b; Cooley, vol. II, p. 1383; *Jacobson v. L. & L. & G. Ins. Co.*, 135 Ill. App. 20 (1907), affd. 231 Ill. 61, 85 N.E. 95.

by ordinary insurance on merchandise in the owner's store or warehouse.

80*a*. *Coverage and Risks.*—This contract is generally written to cover "samples of merchandise in trunks and other shipping packages consisting of ———, in charge and control of" a named traveling salesman traveling on behalf of the assured within the limits of the United States and Canada. The blank space is used to describe the type of merchandise insured. Such policies usually insure against the risks and perils of fire, lightning, navigation and transportation while in the custody of various carriers; against fire and lightning while on automobiles or in hotels, dwellings or business buildings, except theaters and opera houses; against theft (except theft of jewelry or similar valuables) of an entire trunk or shipping package while in transit in the custody of a common carrier under check or receipt or while checked in a hotel.[1] Pilferage is excluded.[2]

The property is not insured while in the assured's business premises or in any place where he carries specific insurance,[3] nor while on wagons, stages, or carriages except within the corporate limits of cities and towns. Exclusions specifically eliminate damage due to breakage unless caused by fire, collision or derailment;[4] losses due to delay, inherent vice, improper or insufficient

[1] It has been held that damage by flood while in a hotel is not covered, *Posner v. Ins. Co.*, 300 Fed. 383 (1924), and under another form that loss by fire in the traveler's residence is excluded, *Jacobson v. L. & L. & G. Ins. Co.*, 135 Ill. App. 20 (1907), affd. 231 Ill. 61, 85 N.E. 95. See Chap. II for discussion of risks insured by this policy.

[2] See sec. 35, *n* as to meaning of pilferage.

[3] See sec. 42, *n* as to meaning of specific insurance.

[4] It has been held that "derailment" does not include the skidding of an automobile truck into a gutter and its subsequent overturning. Derailment is used only in connection with transportation by rail. *Graham v. Ins. Co. of North America*, 220 Mass. 230, 107 N.E. 915 (1915).

packing or address; and such losses as are excluded by the customary war, strikes, and riots clause. The rest of the policy is usually a mere replica of the general conditions of the transportation policy, except that some underwriters specifically permit the assured to accept baggage checks, receipts, tickets, etc., without such acceptance being considered an impairment of the carrier's liability.[1]

Sometimes the commercial traveler's policy is written on a broader form, generally by endorsement. The endorsement used by underwriters granting this coverage is usually "on merchandise consisting principally of ....., the property of the assured or held by them in trust or on commission or sold but not delivered or the property of the parties for whom they are agents and for which they are liable." As a rule the endorsement definitely eliminates the risks and exclusions enumerated in the basic policy and substitutes therefor insurance "against loss or damage from any cause whatever," except for certain specified exclusions.

This endorsement is not only broader in respect of the risks insured against but also in other respects. It covers the property while in the custody of the assured's salesmen or in the hands of the principals when acting as salesmen or in transit between the assured's premises and salesmen. But the policy does not cover the property while on the business premises of the assured or their salesmen or agents or while left unattended in or on any automobile or motorcycle.[2]

[1] See sec. 51.

[2] Property in an automobile has been held to be unattended if the custodian "is not actually within or on the automobile or so near thereto as to be able to observe a theft of the contents." *William Kinscherf Co. v. Ins. Co.*, 234 A.D. 385, 254 N.Y. Supp. 382 (1931).

81. The Theatrical Floater.

The *theatrical floater*, as its name indicates, is designed to insure theatrical property.[1] It is generally written as an endorsement on the scheduled property floater[2] but may be written as one document, provided the stipulations of the scheduled property floater be incorporated. The policy insures "scenery, costumes and theatrical properties (excluding buildings and their improvements and betterments, and furniture and fixtures that do not travel about with theatrical troupes), their own, or held by them in trust, or on commission, or on consignment, or on which they have made advances, or sold but not delivered,"[3] used in the production of a named play.

The risks insured against and excluded are practically the same as those to be found in the transportation policy.[4] There is, however, an express warranty that the assured will not enter into any special agreement releasing or limiting the liability of truckmen or other carriers, without the written permission of the insurer.[5] Another clause makes the assured a co-insurer to the extent of the deficiency if he has insured for less than the actual value of the property,[6] and a further agreement makes the policy excess insurance only, "if at the time of loss or damage there be any other insurance which would attach if this insurance had not been effected."[7]

[1] I.M.U.A. form.
[2] Sec. 74, *n.*
[3] See sec. 15.
[4] See Chap. II.
[5] See sec. 51.
[6] See sec. 63*b*.
[7] See sec. 42.

82. Horse and Wagon Policy.

The *horse and wagon policy*, like the theatrical floater, is generally written as an endorsement on the scheduled property floater;[1] but it may be written as one document, provided the conditions of the scheduled property floater be incorporated therein. The contract insures horses, mules, and vehicles drawn by them and also covers harness, saddlery, liveries, blankets and similar equipment. The risks are similar to those covered by the transportation policy,[2] and the exclusions do not differ materially from those heretofore considered.

83. Physicians' and Surgeons' Policy.

Although surgical and scientific instruments used by physicians and surgeons may seem not to be so frequently subject to transit risks as some other articles, marine underwriters often insure such property under a floater policy known as the *physicians' and surgeons' policy.* This policy insures "surgical and scientific instruments and all apparatus used in the medical profession" and owned by the assured "during transportation or otherwise, including in the residence of the assured . . . against all loss or damage howsoever caused," with a few unimportant exceptions. There are no stipulations in the policy differing in any essential respect from those which have been considered above.

84. Radium Floater.

The *radium floater*[3] is ordinarily written as an endorsement on the scheduled property floater.[4] It covers specifically described radium "against all risks of loss or

[1] I.M.U.A. form. See sec. 74, *n.*
[2] See Chap. II.
[3] I.M.U.A. form.
[4] See sec. 74, *n.*

damage," with a few exceptions.[1] The general conditions, of course, are those of the scheduled property floater. The policy is in demand principally by hospitals and laboratories.

85. Floaters Insure Portable Property.

From this brief review of the floater policies, it is apparent that they, like the transportation policies, are designed to insure portable property in transit or constantly subject to being put in transit. It is this feature which distinguishes the coverage furnished by all the inland marine policies from that afforded by other forms of insurance, and hence makes it possible for the owner to obtain protection not available under the standard forms of fire, marine, and casualty policies. While many of the floater forms are to some extent standardized, others are issued in such form as individual underwriters are willing to write them; and such a variety of forms is offered as to cover practically all the needs of individuals and business concerns for that type of insurance.

[1] See sec. 37.

CHAPTER VI

BAILEE, LEGAL LIABILITY AND SPECIAL RISK POLICIES

BAILEE POLICIES

86. Bailee Policies.

In an earlier chapter it was pointed out that a bailee may insure the property of others entrusted to his care.[1] The practice has become quite common under modern business conditions. In fact it is the custom for such bailees as warehousemen, public storers, dyers, cleaners, laundrymen, and other custodians who perform services to the property of others to insure the goods entrusted to them, whether or not they have agreed to do so. Such insurance serves a dual purpose. By furnishing direct protection to the owner of the goods, it enables the bailee to attract customers whose patronage he might otherwise be unable to obtain. Furthermore, it permits the bailee to avoid troublesome and costly disputes with his customers when loss or damage occurs. A further advantage, which is sometimes not appreciated by the owner of the property, is that in some jurisdictions such insurance gives him a direct right of action against the insurer, so that if the bailee will not sue the insurer, the bailor himself may do so.[2]

[1] Sec. 15. See also *Phoenix Ins. Co. v. Erie Trans. Co.*, 117 U.S. 312, 323, 6 Sup. Ct. Rep. 750, 29 L. ed. 873 (1885).

[2] *Exton v. Home Fire Ins. Co.*, 249 N.Y. 258, 164 N.E. 43, (1928) aff'g. 222 A.D. 237; *Utica Canning Co. v. Home Ins. Co.*, 132 A.D. 420, 116 N.Y. Supp. 934 (1909). In *Johnston v. Charles Abresch Co.*, 123 Wis. 130, 101 N.W. 395 (1904), the bailee was held liable for the bailor's loss

The bailee is not limited to insuring his own interest but may insure the goods to their full value.[1] His insurable interest is derived from the fact that he is the custodian of the property and as such is charged with certain duties and responsibilities; it does not depend on his being liable in case of loss but exists independently of such liability.[2] However, if the bailee collects the whole insurance, he must hold the excess over his own interest in trust for the owner,[3] unless by the contract of bailment the bailee has made himself an insurer. In such case it has been held that the insurance is for the bailee's exclusive benefit.[4]

In order to meet the demand for insurance of this kind, inland marine underwriters have for a number of years been issuing policies of insurance to many kinds of bailees. Generally these contracts have appeared as printed or typewritten endorsements attached to the transportation policy, but it is not necessary to write the insurance in that manner. There has been little or no standardization among the forms used by the various underwriters and often none among the forms used by one underwriter in dealing with various members of

because he settled with the insurer without including the bailor's claim. The same result was reached in *Snow v. Carr*, 61 Ala. 363 (1878).

[1] See sec. 15. See also *Home Ins. Co. v. Baltimore*, 93 U.S. 527, 23 L. ed. 730 (1876); *Calif. Ins. Co. v. Union Compress Co.*, 133 U.S. 387, 10 Sup. Ct. Rep. 365, 33 L. ed. 730 (1889); *Home Ins. Co. v. Peoria Ry. Co.*, 178 Ill. 64, 52 N.E. 862 (1899); *Roberts v. Firemen's Fund Ins. Co.*, 165 Pa. 55, 30 Atl. 450 (1894); *Brooklyn Clothing Corp. v. Fidelity-Phenix Ins. Co.*, 205 A.D. 743, 200 N.Y. Supp. 208 (1923).

[2] *Eastern R.R. Co. v. Relief Ins. Co.*, 98 Mass. 420 (1868); *Sturm v. Atlantic Mutual Ins. Co.*, 63 N.Y. 77 (1875); *Home Ins. Co. v. Peoria R.R. Co.*, 178 Ill. 64, 52 N.E. 862 (1899).

[3] *Calif. Ins. Co. v. Union Compress Co.*, 133 U.S. 387, 10 Sup. Ct. Rep. 365, 33 L. ed. 730 (1889); *Home Ins. Co., v. Baltimore Whse. Co.*, 93 U.S. 527, 23 L. ed. 730 (1876); *Polley v. Daniels*, 238 A.D. 181, 264 N.Y. Supp. 194 (1933).

[4] *Bradley v. Brown*, 78 Neb. 836, 112 N.W. 331 (1907).

the same trade. In fact the contract is often the result of negotiation with a particular assured. While insurance of this kind may be written on any kind of bailed property, the forms issued to furriers, fur storers, laundrymen, and cleaners are the best-known. Such others as are written are usually variations of the two forms mentioned and are prepared to meet special requirements. The bailee policies cover property which fluctuates both in amount and in location and are generally written on an open reporting basis. They are in fact only another kind of floater and differ from those previously discussed principally by reason of the fact that they are issued to bailees rather than to the owners of the goods.[1]

87. Furrier's Customer's Policy.

The *furrier's customer's policy* is issued to furriers, fur storers, cleaners, repairers, and similar custodians. It insures "all kinds of furs, or garments trimmed with fur, being the property of customers, accepted by the assured for storage, alterations, repairing, cleaning, or remodeling and for which the assured has issued a receipt under which the assured agrees to insure the property."[2] Whether or not the property will come under the coverage of the policy is optional with the customer. If he carries insurance under the fur floater or the jewelry-fur floater,[3] it is unlikely that he will request the furrier to agree to insure under the latter's policy; but if not, it is quite probable that he will accept the protection offered by the furrier. If such protection is accepted, the property will be insured against all risks[4] (with some unimportant

[1] See sec. 65 for definition of floater policies.

[2] I.M.U.A. form.

[3] See secs. 67 to 68.

[4] See sec. 37 for meaning of "all risks."

exceptions) while it is in the custody or control of the furrier at his place of business for alterations, repairing, cleaning, remodeling, or preparation for storage; and while in storage rooms, vaults, or safes; and during transportation[1] between the premises of the customer and the furrier.

87*a*. *Policy Conditions.*—The furrier's customer's policy is an open reporting policy, runs continuously until canceled in accordance with the terms of the cancellation clause,[2] and provides for premiums payable monthly on the values at risk. In case of loss, the underwriter is given the option of adjusting the claim with the assured for the account of the owner of the goods, or of adjusting it directly with the owner, or of replacing or repairing the lost or damaged article at a cost not exceeding the assured's retail selling price. Like the jeweler's block policy, the contract contains a warranty with respect to protective devices. The warranty is that the assured will "use due diligence to maintain during the period of this policy such protective safeguards as may have been indicated in the proposal for this policy."[3] Also, like the jeweler's block policy, the contract is written after a proposal form has been filled out by the applicant for insurance; but unlike that policy, the proposal is not made a part of the policy, and hence its contents are not warranted to be true.[4]

As the furrier's customers sometimes insist on having evidence that their property is insured, the furrier is

[1] "During transportation" is synonymous with "in transit" which was discussed in sec. 19. See also sec. 29, *n*.

[2] See sec. 55.

[3] See sec. 77*f*.

[4] *Accident Ins. Co. v. Crandal*, 120 U.S. 527, 7 Sup. Ct. Rep. 685, 30 L. ed. 740 (1886); *Banker's Life Ins. Co. v. Miller*, 100 Md. 1, 59, Atl. 116 (1905); *Fitzgerald v. Supreme Council*, 39 A.D. 251, 56 N.Y. Supp. 1005 (1899), affd. 167 N.Y. 568, 60 N.E. 1110.

often permitted to issue certificates of insurance to them just as an exporter under an open marine policy is permitted to issue similar certificates to his vendees. Where this permission is granted, the assured agrees not to issue certificates for a period longer than 12 months and to issue them only in combination with annual storage agreements. Thus the privilege may be exercised only with a certain class of customers. As to these, it is agreed that cancellation of the policy will not affect any risk then pending, but that the insurer may cancel the certificates on five days' notice to the holder of the certificate.

There are a number of other clauses in the policy, but they resemble the stipulations discussed in Chap. III and elsewhere in this work and need not be mentioned here.

88. Laundry Policy.

Another form of bailee policy in common use is available to laundrymen and dry cleaners who wish to insure the goods of their customers from the time the property is collected by the launderer's or cleaner's agent until it is returned again to the owner. This policy, usually written as an endorsement on the transportation policy, ordinarily insures "all kinds of lawful goods . . . laundered or to be laundered," property of the assured's customers, while in the custody of the assured, his agents or stores on the premises of any one of them, and while being transported to and from the assured's customers, agents, or stores.[1] An exception to the coverage is generally made for goods left on delivery vehicles over night, unless locked in a private garage or placed in the custody of a common carrier.[2]

[1] "While being transported" is synonymous with "in transit," which is discussed in sec. 19. See also sec. 29, *n.*

[2] For meaning of "in the custody of a common carrier," see sec. 22.

The risks and exclusions usually found in this policy are similar to those in the transportation policy,[1] except that the risk of sprinkler leakage is added. By the addition of this risk, insurance is provided against damage caused by the leaking of sprinklers, which are a part of the fire prevention devices of most modern industrial buildings. As the policy is customarily attached to the transportation policy, the general conditions appearing in that contract are applicable unless they vary from those in the laundry form. The latter provides for notice of loss "forthwith,"[2] detailed proofs of loss,[3] submission to examination under oath,[4] and appraisal in case of dispute as to the amount of loss or damage.[5] A special condition permits the assured to adjust small claims directly with the owner, and other clauses provide for certain limits to the insurer's liability.

Some laundry policies contain also the following clause:

> It is the purpose of this insurance to indemnify the assured only to the amount which they are obliged to pay and do pay on the property insured by reason of losses caused as herein defined.

When a policy begins with the statement that it covers "all kinds of lawful goods," the property of the assured's customers, and that statement is followed later by some clause similar to the one quoted above, the question may well be asked whether the contract is insurance on property of the assured's customers or on the assured's liability to those customers. Unfortunately the decided cases do not assist very much in

[1] See Chap. II.
[2] See sec. 47.
[3] See sec. 48.
[4] See sec. 77*g*.
[5] See sec. 63.

determining this question, and the answer in each case seems to depend on the words of the particular policy.

In one case,[1] the plaintiff, who was a tailor, had a policy "on merchandise generally . . . , his own, held in trust or on consignment, sold but not removed, for which the assured may be otherwise liable, being the stock of a tailor shop." After a loss by fire, plaintiff demanded payment for his own loss and also for "customers' goods." The court held that the policy covered the property of the tailor and his liability to his customers, but that, in the absence of proof that the assured was liable to his customers, he could not recover the value of their goods.

In another case[2] where by one clause the policy insured against "all direct loss or damage" to coats, and by a separate clause covered the bailee's "interest in and legal liability for" property held "in trust or on commission or on joint account with others or on storage or for repairs," the court held that the policy insured only the bailee's claim for work and labor on the goods and his liability as measured by his agreement with the owner.

In still another case,[3] the defendant, who was a dyer, had a policy which covered "property of the assured, held in trust or on consignment or sold but not removed, or belonging to others for which the assured is liable including the value of labor thereon." The defendant had some of plaintiff's goods on his premises when a loss by fire occurred but collected only for his own loss,

[1] *Sagransky v. Ins. Co.*, 92 Pa. Sup. Ct. 500 (1927).

[2] *Brooklyn Clothing Corp. v. Fidelity-Phenix Ins. Co.*, 205 A.D. 743, 200 N.Y. Supp. 208 (1923).

[3] *Cannon Mills v. Flynn*, 82 Pa. Sup. Ct. 298 (1923). See *North British Ins. Co. v. Moffatt*, L.R. 7 C.P. 25 (1871), where the words, "merchandise, the assured's own, in trust or on commission for which they are responsible," were held not to cover the bailor's goods; and *Washburn-Crosby Co. v. Home Ins. Co.*, 199 Mass. 463, 85 N.E. 592 (1908).

refusing to claim for plaintiff's loss. Thereupon plaintiff sued for a share of the insurance money. The court held that defendant's property was insured, but that the words "or belonging to others for which the assured is liable" limited the further coverage of the policy to liability for the bailors' goods.

On the other hand it has been held that insurance on the property of others "for which the assured are or may be liable" is not insurance on liability but on goods of a particular class, *i.e.*, on goods for which the assured may be liable.[1]

In view of these decisions, it is apparent that if it is desired to cover in one policy the bailor's interest as well as the assured's liability, clear and unambiguous words to that effect should be employed.

89. Other Bailee Policies.

The bailee policies discussed above indicate the nature rather than the extent of this class of insurance contracts. There is no limit to the number and form of such contracts. They are written on all kinds of goods, and so long as they insure while in transit and while on the bailee's premises for some purpose other than mere storage, they are deemed to be within the scope of inland marine insurance.[2] Policies of this kind are closely akin to legal liability policies, which are the next subject of discussion.

LEGAL LIABILITY POLICIES

90. Nature of Subject.

Bailees often insure not only the property which they hold in trust for others but also their own legal liability

[1] *Home Ins. Co. v. Peoria Ry. Co.*, 178 Ill. 64, 52 N.E. 862 (1899); *Phenix Ins. Co. v. Belt Ry. Co.*, 182 Ill. 33, 54 N.E. 1046 (1899); *Commonwealth v. Hide and Leather Ins. Co.*, 112 Mass. 136 (1873).

[2] See Appendix A.

to the owners of the goods.[1] Sometimes both coverages are included in one policy, but more often they are separate policies. The practice of insuring one's legal liability is not limited to bailees but is followed by the owners of all kinds of property and by employers generally. Indeed, such insurance covers so broad a field that, as Judge Crane said in a recent case,[2] "The whole realm of law may be pressed into the term, 'legal liability.'" Thus the owners of automobiles and of buildings and factories, employers such as common carriers, contractors, and manufacturers, and many others customarily carry insurance against one or more forms of liability. The insurance may be against liability to the assured's own employees, or to the assured's customers or tenants, or to the public generally; or the policy may relate to damage to property rather than to persons. There is in fact an unlimited number of variations to which liability policies may be extended.

91. Indemnity or Liability?

At the outset it should be noted that there is a distinction between insurance against loss or damage by reason of liability, and insurance against liability for loss or damage. A policy insuring against loss or damage by reason of liability is generally considered an indemnity policy, whereas insurance against mere liability is usually referred to as a liability policy. By an indemnity policy the insurer agrees to reimburse the assured for the damages and expenses to which he may be put by being held liable for some accident. By a liability policy the insurer agrees to pay the assured for losses for which the assured may become liable. The distinction is

[1] Sec. 88.

[2] *Atlantic Basin Iron Works v. American Ins. Co.*, 250 N.Y. 322, 165 N.E. 463 (1929).

important in determining when the underwriter becomes liable to pay. If the policy is one of indemnity, the insurer's liability depends on the assured's actually suffering a loss by having paid a judgment and attorney's fees or other expenses; but if the policy is merely against liability, the underwriter must pay on proof that liability has arisen.[1] This distinction is stated briefly in *Davies v. Maryland Casualty Co.*,[2] where the court while considering an employers' liability policy said:

> Employers' policies are of two sorts. One, called a liability contract, obliges the insurer to pay the loss without first requiring the assured to do so; the other type . . . is called an indemnity policy, and imposes only reimbursement after the employer has paid the debt.

The question under which head a particular policy falls depends on the intention of the parties as indicated by the terms of their contract.[3] If, for example, the insurer agrees to pay "all damages with which the insured might be legally charged, or required to pay, or for which it might become legally liable," it is apparent that the policy is against liability and that the underwriter must pay, whether or not the assured has paid.[4] And even where the underwriter agrees to indemnify the assured against loss "from the liability imposed by law," other qualifying words may make the policy insurance against liability only.[5] When the policy

[1] *Klotzbach v. Bull Dog Auto Ins.*, 267 S.W. 39 (Mo.) (1924).

[2] 89 Wash. 571, 575, 154 Pac. 1116 (1916). See also *U.S. Fid. Co. v. Williams*, 148 Md. 289, 299, 129 Atl. 660 (1925); *Finley v. U.S. Casualty Co.*, 113 Tenn. 592, 598, 83 S.W. 2 (1904); *Coleman v. New Amsterdam Casualty Co.*, 247 N.Y. 271, 160 N.E. 367 (1928); *Barsuk v. Independence Ins. Co.*, 236 A.D. 162, 258 N.Y. Supp. 148 (1932); but see *Juskiewicz v. N.J. Ins. Co.*, 210 A.D. 675, 206 N.Y. Supp. 566 (1924).

[3] *Fenton v. Poston*, 114 Wash. 217, 195 Pac. 31 (1921).

[4] *American Emp. Ins. Co. v. Fordyce*, 62 Ark. 562, 36 S.W. 1051 (1896).

[5] *Fenton v. Poston*, 114 Wash. 217, 195 Pac. 31 (1921).

provides for immediate notice of an accident, permits the insurer to defend actions against the assured, and prohibits settlement or the expending of money in defence without the insurer's consent, the tendency is to hold the policy to be one against liability.[1] On the other hand, if the policy contains a "no-action" clause, *i.e.*, a provision that "no action shall lie against the company as respects any loss under this policy unless it shall be brought by the assured himself to reimburse him for loss actually sustained and paid by him in satisfaction of a judgment," there is a very strong indication that the insurance is against loss only and hence is an indemnity policy.[2]

Under a liability policy, the assured may recover from his underwriters by showing that a judgment has been obtained against him,[3] or in some cases merely by

[1] 36 Corpus Juris 1057, and cases cited there. See also *Employers' Ins. Co. v. Bodron*, 65 Fed. (2nd) 539 (1933).

[2] *Finley v. Casualty Co.*, 113 Tenn. 592, 83 S.W. 2 (1904); *Allen v. Aetna Life Ins. Co.*, 145 Fed. 881 (1906); *Glatz v. Gen. Accident Co.*, 175 Wis. 42, 183 N.W. 683 (1921). The importance of the presence or absence of the so-called "no-action" clause is strikingly illustrated by a comparison of *Combs v. Hunt*, 140 Va. 627, 125 S.E. 661 (1924), and *Fentress v. Rutledge*, 140 Va. 685, 125 S.E. 668 (1924). The effect of the "no-action" clause is avoided in some states by statutes forbidding the issuance of liability or indemnity policies unless such policies contain a provision that the insolvency or bankruptcy of the assured will not release the underwriter from payment. These statutes generally provide that if the policy does not embody such a provision, the policy will nevertheless be deemed to contain the required clause. See sec. 109 of the New York Insurance Law. Sec. 109 has been held applicable to a policy insuring a tug boat owner against liability for personal injuries. *Hansen v. Cont. Ins. Co.*, 262 N.Y. 136, 186 N.E. 420 (1933). *Quaere*, whether or not the statute would apply to a similar policy against liability for property damage.

[3] *Auerbach v. Md. Casualty Co.*, 236 N.Y. 247, 140 N.E. 577 (1923); *Royal Ins. Co. v. St. Louis Ry.*, 291 Fed. 358 (1923); *James Shewan & Sons v. Fidelity Phenix Ins. Co.*, 235 A.D. 698, 255 N.Y. Supp. 900, 1932 A.M.C. 561; *Saratoga Trap Rock Co. v. Standard Ins. Co.*, 143 A.D. 852, 128 N.Y. Supp. 822 (1911).

showing that liability exists;[1] but under an indemnity policy, he must show that he has actually suffered loss by the payment of a judgment and other expenses.[2] However, technical constructions are not favored, and where the contract is so ambiguously worded as to tincture its provisions with features of both types of policy, it will be held insurance against liability.[3] Even where there is no ambiguity, the underwriter may sometimes waive the clause by taking over the defence of the action.[4] Of course if the assured is not liable, he cannot, in the absence of an express stipulation, recover his own defence expenses from his liability underwriters.[5]

92. Scope of Subject.

It is not intended to discuss liability policies generally but merely to describe briefly such liability and indemnity policies as are issued in connection with inland marine or transportation insurance. This, of course, eliminates from consideration those policies which protect against loss or liability for injuries to persons, as well as those issued to ocean carriers insuring them against liability for damage to cargo, hulls, or other property. Thus narrowed, the field may be said to include only such liability and indemnity policies as are issued to bailees, carriers of goods by land, freight forwarders, contractors, and kindred persons.[6]

[1] *Eberhard v. Aetna Ins. Co.*, 235 N.Y. Supp. 445, 134 Misc. 386 (City Court) (1928).

[2] *Glatz v. Gen. Accident Corp.* 175 Wis. 42, 183 N.W. 683 (1921); *Conqueror Co. v. Aetna Ins. Co.*, 152 Mo. App. 332, 138 S.W. 156 (1911).

[3] *Barney v. Ins. Exchange*, 240 Mich. 199, 215 N.W. 372 (1927).

[4] *Davies v. Md. Casualty Co.*, 89 Wash. 571, 154 Pac. 1116 (1916); *Sanders v. Ins. Co.*, 72 N.H. 485, 57 Atl. 655 (1904).

[5] *Munson v. Standard Marine Ins. Co.*, 156 Fed. 44 (1907).

[6] As to liability insurance generally, see 36 Corpus Juris 1053 and Cooley, Vol. VI.

93. Bailees' Liability Policies.

In the absence of contract, a bailee is liable to the owner of goods entrusted to the bailee, only if the goods be lost or damaged by reason of his negligence. However, such persons frequently contract to be liable for certain losses or perhaps for all loss and damage, regardless of negligence. Therefore, when an insurer agrees to insure the liability of a bailee, he may be called on to indemnify the bailee either for damage due to his negligence or for damage arising by reason of contract.[1]

There are no standard forms of bailee liability policies. Insurers in this field customarily insure dyers, cleaners, warehousemen, wharfingers, owners of railroad terminals, barge owners, and many other bailees, under contracts designed to meet the special needs of the assured. The laundry policy, which was discussed above, and the policies described in the cases referred to in that connection are examples of policies insuring the bailee's liability.[2]

Such policies may cover the legal liability of the assured for loss or damage to property from any cause, or they may stipulate that the insurance will cover the assured's legal liability for loss or damage caused by certain specified risks. As a rule, policies of this nature forbid the assured to admit liability to claimants, and contain an agreement that the assured's contracts with owners of goods will be made on certain prescribed forms of receipts or bills of lading, the insurance to be void if the assured extends his liability beyond that provided for in the agreed form. Stipulations of this kind enable the underwriter to know with some accuracy the extent of the risk which he has covered and prevent him from

[1] *Atlantic Basin Iron Works v. American Ins. Co.*, 250 N.Y. 322, 165 N.E. 463 (1929); *Brooklyn Clothing Corp. v. Fidelity-Phenix Ins. Co.*, 205 A.D. 743, 200 N.Y. Supp. 208 (1923).

[2] See sec. 88.

claiming that the assured has impaired the insurer's right of subrogation by his contract with the owner of the goods.[1] Many other clauses, varying with the nature of the needs and requirements of the assured, are usually inserted in the policy, which is ordinarily attached to the transportation policy or to the marine policy on cargo.

93*a*. *Hotel Keeper's Policy.*—Hotel keepers, sometimes in the position of bailees and sometimes as carriers, often receive claims for damage to and loss of property belonging to their guests. In order to protect themselves against liability for such claims, they usually carry liability or indemnity insurance. By a form available in some states, the underwriter agrees "to indemnify the assured against loss from liability imposed by law upon the assured for damages on account of loss of and/or injury to or destruction of the property of guests of the assured's hostelry." The policy generally covers the legal liability of the assured "from the time the property of a guest comes into the possession of the assured or his agents through the issuance of baggage or transfer checks, thence during period of transfer between hotel premises and baggage platforms of railroads and/or steamship lines." It may cover also while the property is "within the premises of the hotel or inn."

The contract does not ordinarily insure the hotel keeper's liability for loss of or damage to valuable papers or currency, unless they are deposited in the hotel safe or vault. Furthermore, the assured promises to post the customary notices that a safe has been provided for keeping the effects of guests and that he will not be responsible for them unless deposited therein.[2] There

[1] As to impairment of the underwriter's right of subrogation, see sec. 51.

[2] In most states hotel keepers are permitted by statute to avoid liability for valuables by providing a safe for them and posting notices that a safe

are also numerous losses for which, even though the innkeeper be liable, he cannot claim reimbursement under the policy commonly in use. Among these are losses due to fire, lightning, explosion, delay, collusion between guests and the assured, and a number of others. In addition to these stipulations, the contract contains a number of clauses similar to those to be found in transportation and other policies discussed elsewhere in this work.

A variation of this type of policy is sometimes issued to the proprietors of parcel rooms in hotels, railway and bus stations, restaurants and theatres. The assured generally agrees to use only an agreed form of check or receipt, and this is so worded as to provide the maximum protection permitted by law.

94. Carrier Liability Policies.

The second type of inland marine liability policies referred to above insures carriers of goods by land or by land and water. Carriers of goods either by sea or by land are held to a high degree of responsibility for the safe delivery of the property at destination; and in the event of a great catastrophe, they may incur liabilities which are well nigh ruinous. For this reason, most of them carry insurance of some kind to protect them from such losses. Ocean carriers are usually insured by protection and indemnity clubs, but carriers by land are customarily protected by insurers under inland marine policies. The principal carriers by land are railroads and motor trucks.

95. Railroads.

Railroad companies have never been extensive users of liability insurance, due probably to the fact that the

has been provided. See sec. 200 of the General Business Law for the New York statute on the subject.

goods which they carry are scattered over a wide area and hence, generally speaking, are not subject to such heavy risks as goods carried by sea. Furthermore, when a train is wrecked or a car takes fire, it is less likely that the entire contents of the cars in the train will be destroyed than that the whole cargo of a ship similarly endangered will be lost. However, where the railroad carries large quantities of especially valuable goods, such as silk or cotton, or where large quantities are concentrated at terminals, it is not unusual for insurance to be procured by the railroad against liability for loss or damage. There are no standard forms for such insurance. The policies issued are prepared to meet the individual needs of each assured. They may insure the railroad's liability from the time the goods come into its custody until arrival at destination or delivery to consignee, or they may insure only while in the carrier's warehouse, dock, or terminal. And they may be written either as indemnity or as liability policies.[1] In general, contracts of this kind follow the form of policy used to insure the liability of motor truckmen—a form which will be considered in the next section.

96. Motor Trucks.

Perhaps the most generally known of the inland marine liability policies is the one commonly issued to motor truckmen. Formerly this policy often combined insurance on the goods carried by the truckman and insurance on the carrier's liability, being so written in some cases that it was difficult to say which risk was covered. Frequently the result was that in case of a loss of goods the underwriter was called on to pay, whether the carrier was liable or not. This double-risk policy is used less often now than formerly. Instead, most underwriters issue a policy on goods and a policy

[1] See sec. 91.

on liability as separate contracts and thus obtain premiums commensurate with the risks accepted.

The form ordinarily used bears a close resemblance to the owner's motor transit policy.[1] Indeed some companies use the same printed form for both purposes and merely delete inappropriate words and insert terms which are intended to change the contract from a policy on goods to insurance on liability. Whether or not the same printed form is used, the policy when issued is intended to furnish insurance on the assured's liability as a carrier for certain classes of loss and damage.

The coverage is generally limited to insurance against liability for loss or damage caused by the "perils insured against," *i.e.*, fire, collision, overturning, and the other risks enumerated in the policy. In other words, if a loss be caused by one of the risks mentioned in the policy and under circumstances which would make the carrier liable, he may claim payment under the policy. However, if the loss be due to one of the enumerated risks but under circumstances for which the carrier is not liable, no claim arises against the underwriter. Losses due to causes not mentioned and for which the carrier is liable must, of course, be borne by the carrier.

Under this form, the assured's liability is covered only while the property is in the assured's custody[2] on the motor trucks described in the contract of insurance and during transportation, *i.e.*, while in transit, which under some forms specifically includes the time while the goods are in such places as depots, stations, garages, and platforms, incidental to transportation.[3]

Generally speaking, the stipulations of the truckman's liability policy are similar to those of the owner's motor

[1] See secs. 63 to 63*g*.

[2] See sec. 22 for meaning of "in the custody of."

[3] See sec. 19 for meaning of "in transit."

transit policy.[1] They differ, or at least should differ, by referring to the subject matter of the insurance as liability rather than as goods, merchandise, or property. For example, where appropriately altered, the co-insurance clause is sometimes written as follows:

> This Insurance Company shall in no event be liable under this Policy in respect of merchandise on any truck for a greater proportion of any loss or damage than the limit applicable under this Policy to such truck bears to the liability of the Assured were such merchandise a total loss, but in no case shall this Company be liable for more than the actual cash value of such merchandise or for more than the limit applicable thereto under this Policy.

Under such a co-insurance clause, the carrier is a co-insurer, provided the insurer's limit of liability is less than the loss incurred would be if the loss of goods were total. Thus the same principle is applied to the settlement of claims under this policy as under that of the owner's motor transit policy.[2] The other clauses of the policy are as a rule similarly altered so as to make them applicable to the subject matter insured.

Where the same printed form is used for insurance on property and on liability, if inappropriate words are not altered, difficulties in construing the contract often arise. An instance of such difficulties is to be found in the case of *Atlantic Basin Iron Works v. American Insurance Co.*[3] In that case, the basic form was a marine policy on hull, which contained also certain "clauses for builders' risks." To that form were attached two typewritten sheets insuring the legal liability of the assured within certain limits. The plaintiff assured, after a trial, had been held liable for negligently setting fire to a barge and her cargo. After having paid the owner of barge

[1] See secs. 63 to 63*g*.

[2] See sec. 63 b.

[3] 250 N.Y. 322, 165 N.E. 463 (1929).

and cargo, plaintiff sought to recover from its liability insurer. In order to make out a case, plaintiff relied on the printed words of the "clauses for builders' risks," as it was apparent that the typewritten clauses did not cover. The trial court's holding in defendant's favor was reversed by the Appellate Division, but the Court of Appeals by a divided court affirmed the judgment of the trial court. In the course of its opinion the higher court said:

> What was the contract of insurance between the parties? The difficulty in answering this question arises out of the practice of annexing to the standard form of marine insurance policy a rider or statement of the extended risks covered, to and about which the printed clauses in the standard form have little or no application.

Another more recent instance is a case[1] in which a typewritten endorsement, covering a ship repairer's legal liability on boats in its custody being altered or repaired, was attached to a hull form. The boat *Faith* was laid up at the wharf of the plaintiff assured. While there the boat was damaged through the negligence of plaintiff, who had to pay her owner. In a suit against the liability underwriter, the plaintiff contended that the lay-up privilege appearing in the hull policy brought the *Faith* within the coverage of the endorsement on liability insurance; and the case went to the Court of Appeals before it was finally decided that the insurer was not liable.[2]

These cases suffice to show the importance of having a complete and separate policy on liability, rather than attempting to adapt a policy on property to one on

[1] *Marine Basin Co. v. Northwestern Fire and Marine Ins. Co.*, 256 N.Y. 306, 176 N.E. 404 (1931).

[2] See also *Munson v. Standard Marine Ins. Co.*, 156 Fed. 44 (1907), and *The Minnie R*, 36 Fed. (2nd) 69, 1930 A.M.C. 68, rev. 1931 A.M.C. 995.

liability. However, if a full-waiver clause is inserted in the endorsement, the terms of the printed form will be held to be eliminated from the contract.[1]

97. Other Liability Policies.

Policies on liability, similar to those discussed above, are issued to freight forwarders, to contractors whose business requires the moving of their equipment from place to place, to persons engaged in installing machinery and equipment, and to other persons who handle portables under circumstances which may make them liable for property damage. While such contracts are written to meet the needs of each assured, they are similar to the liability policies discussed above.

SPECIAL RISK POLICIES

98. Special Risks.

The absence of restrictions as to forms and rates has made it possible for inland marine underwriters to issue policies of insurance entirely foreign to other branches of the insurance business. This was one of the things which made possible the growth of inland marine insurance[2] and which has resulted in making it a sort of catch-all for insurance which cannot readily be classified under any other head. Although some of these unclassified policies have been developed into what may with some truth be called standard forms, many contracts of insurance are still written with little reference to such

[1] *N.Y. & Porto Rico S.S. Co. v. Aetna Ins. Co.*, 204 Fed. 255 (1913). The clause used in this case provided that "the terms and conditions of this form are to be regarded as substituted for those of the policy to which it is attached, the latter being hereby waived." The court held that a two-year limitation for commencing suit in the printed policy was not a part of the contract of insurance.

[2] See sec. 7.

forms. These policies cover varieties of property wholly unrelated to one another. Only a few of them can with profit be discussed here under the head of *special risk policies.* The contracts considered are the installment sales policy, the bridge policy, the motion picture negative policy, and the livestock policy.

99. Installment Sales Policies.

Selling portable property on the installment plan, under a conditional contract of sale, or leasing the property until the purchase price has been paid, has become so common a practice that special policies have been devised to meet the seller's needs. These policies are of two kinds. One form protects the vendor's interest only. The other form protects the interests of both vendor and vendee until the vendor's interest ceases. Policies of this kind generally insure the articles sold or leased from the time the merchandise passes into the seller's shipping room for packing or shipment and continue to cover while in transit and while on the purchaser's premises until the vendor's interest ceases. The property is covered also while in transit to and from the buyer's premises and other locations and while being repaired or adjusted in other locations.

The risks and exclusions are similar to those which have been discussed above in connection with numerous other policies. As a rule, the stipulations of the transportation policy are applicable, because the installment sales policy is customarily attached as a rider to the transportation form.[1]

The principal difference between the two forms of installment sales policy is that where the vendor's interest only is insured the insurer's liability is limited

[1] See Chaps. II and III.

to the amount of the unpaid installments,[1] while under the form insuring the interests of both seller and buyer the insurer may be required to pay the full cost of repairing or replacing the damaged or destroyed property, with proper deductions for depreciation. Under the latter form, premiums are paid on the full value of the property during the life of the policy; but where only the seller's interest is insured, the premium decreases with every installment that is paid on the purchase price.

100. Motion Picture Negative Policies.

Another form of special risk insured by inland marine underwriters is the motion picture negative. Often such negatives are produced after many months of labor and the expenditure of large sums of money. If they are damaged or destroyed before the positive films intended to be produced are made, the owner may suffer irreparable loss. Negatives, therefore, because of their great value and also because of their susceptibility to damage, are a likely subject for insurance. A large part of this kind of insurance is written on a form of policy designed by The American Negative Film Syndicate, an organization composed of a score or more of inland marine underwriters.

This contract, which is intended to meet the special needs of owners and producers of such negatives, is written on a basic form which is made into a complete policy by the attachment of an endorsement. Several endorsements are available, the one used in each instance to be determined by the business requirements of the assured. Under the basic form the insurance is written

[1] Where a conditional vendor seized machinery from the vendee because installments were not paid, and the property was damaged by fire before sale under the Uniform Sales Act, the vendor was nevertheless allowed to recover the amount of the unpaid installments from his insurer. *Interstate Corp. v. U.S. Fire Ins. Co.*, 243 N.Y. 95, 152 N.E. 476 (1926).

To attach on negative of Motion Picture Productions, the property of the Assured, or at their risk, or for which they are legally liable (but only to the extent of the Assured's interest therein and/or legal liability therefor) or for which they have received instructions in writing to insure, such instructions having been given prior to or simultaneously with the delivery of said negative to the Assured, and prior to loss or damage to said negative.

Thus the contract takes on some of the features of bailee and liability policies as well as insurance of the assured's own property.[1] The basic form contains most of the stipulations to be found in the transportation policy[2] and also several warranties requiring safe practices in shipping and storing.[3]

The endorsements provide insurance against all risks of physical loss or damage from any external cause, with a few minor exceptions.[4] In the riders written on a reporting form the assured agrees to make weekly reports of the values at risk and to pay premiums based on those values. In the riders attached to policies issued to producers the assured agrees to report full details of the work contemplated prior to the commencement of any risk, and at the end of the risk to pay premiums according to an agreed schedule. In all the endorsements, detailed stipulations provide agreements as to the amounts due for loss or damage in nearly every conceivable situation.

The policy is unique only in that it is written for a highly specialized business.

101. Bridge Policies.

Bridges are considered subjects of inland marine insurance because they are an aid to transportation.[5]

[1] See secs. 86 to 97 for discussion of bailee and liability policies.

[2] See Chap. III.

[3] See sec. 77*f*. with respect to necessity of compliance with warranties.

[4] See sec. 37 for discussion of "all risks."

[5] See Appendix A.

The form in common use insures against "direct loss or damage caused by fire, lightning, floods, rising waters, ice, collision, explosion, strikes, riots, civil commotions, malicious damage, tornado, windstorm, earthquake or collapse"—in short, against nearly all risks to which such property is subject.[1] Exceptions to the coverage include what are generally classed as war risks, losses caused by the assured's failure to maintain the property in a thorough state of repair, and damage due to the assured's neglect to use reasonable means to save the bridge after damage has occurred.

The contract contains also a number of general clauses very similar to those in the transportation policy,[2] an agreement for appraisal of loss or damage in case the insurer and assured cannot agree,[3] and at least two clauses which have been adapted from the standard fire policy. The first of the clauses adapted from the fire policy is the so-called 80 per cent co-insurance clause, which provides that the insurer will be liable for no greater proportion of any loss than the amount insured bears to 80 per cent of the actual cash value of the property at time of loss, nor for more than the proportion which the amount of insurance bears to the total insurance on the bridge. The latter part of the clause limits the insurer's liability to a pro rata share of any loss. The earlier part of the clause provides a somewhat different limitation. Its operation is well described in Richards On Insurance[4] in the following words:

> In the absence of a co-insurance clause, the assured collects his whole loss, if that does not exceed his insurance, and his whole insurance, if that does not exceed his loss. With a co-insurance

[1] Most of these risks were discussed in Chap. II.
[2] See Chap. III.
[3] See sec. 63*g*.
[4] 4th ed. p. 352.

clause present, the foregoing rule of recovery is modified, and the recovery reduced, but only if the insurance and the loss are both below the percentage of value, usually 80 or 100 per cent, as named in the clause. If either insurance or loss equals or exceeds the specified percentage of values, the clause is inoperative. In other words, if the insurance represents 80 per cent or more of the value of all the property insured at the time of the loss, full recovery of the loss may be had; but if the insurance is for less than 80 per cent of such value, then the recovery is limited to the proportion of the loss which the amount of the insurance bears to 80 per cent of the value at the time of the loss of all the property insured. To illustrate, if the value of the property insured be $10,000, and the insurance be $8,000 or more, the entire loss, whether of all or part of the property insured, to the extent of the amount of insurance, is recoverable; but if the amount of the insurance in such case was only $5,000, the insured could recover only five-eighths of the loss, whether of all or part, not exceeding the amount of the insurance; if the loss, however, equals or exceeds 80 per cent of the value of the property insured, the entire loss, whether of all or part of the property insured, to the extent of the amount of insurance, is recoverable.

The second stipulation adapted from the standard fire policy is as follows:

This entire Policy shall be void unless otherwise provided by agreement in writing, added hereto,

(*a*) If the interest of the Assured be other than that specified herein.

(*b*) If with the knowledge of the Assured foreclosure proceedings be commenced or notice given of sale of any property insured, by reason of any mortgage or trust deed.

(*c*) If any change takes place in the interest, title or possession of the subject of insurance.

(*d*) If this Policy be assigned or transferred.

(*e*) If the Assured become bankrupt or receivership of the Assured take place.

Agreements of this kind, known as forfeiture clauses, have been a part of the standard fire insurance policy for many years. Their purpose is to protect the insurer from a possible increase in the hazard which he has

assumed. The first four conditions resemble very closely those of the fire policy which have on numerous occasions been held valid.[1] The fifth, clause *e*, is not taken from the fire contract but resembles clause *b* therein. The statement that the policy will be void if the prohibited conditions arise, does not mean that it will automatically cease but merely that it is voidable at the option of the insurer.[2]

A policy on use and occupancy of bridges is available to cover loss of toll income while the use of the bridge is partially or totally suspended, due to damage by the risks insured against. The risks are the same as those against which the bridge itself is insured, and the policy follows the same general lines as the bridge policy.

102. Livestock Insurance.

A further special risk policy insures livestock. In the form generally used space is provided for a description of each animal and a statement of its value. The animals described in the policy are insured against death by fire or lightning; sinking, stranding, collision, or derailment while in transit; marine perils while on ferries or car floats; and destruction within 24 hours after an injury caused by a peril insured against in order to relieve incurable suffering. Special forms for horses and special forms for cattle cover a greater number of risks. In addition to the risks enumerated above, these forms insure against death from natural causes (in states where

[1] *a Sun Ins. Office v. Scott*, 284 U.S. 177, 52 Sup. Ct. Rep. 72, 76 L. ed. 229 (1931); *Barnard v. National Fire Ins. Co.*, 27 Mo. App. 26 (1887).

b Springfield Laundry Co. v. Traders' Ins. Co., 151 Mo. 90, 52 S.W. 238 (1899); *Gibson v. L. & L. & G. Ins. Co.*, 159 N.Y. 418, 54 N.E. 23, 1899; *Merchants Ins. Co. v. Brown*, 77 Md. 79, 25 Atl. 992 (1893).

c Northam v. Dutchess Co. Ins. Co., 166 N.Y. 319, 59 N.E. 912 (1901); *Cummins v. Nat. Fire Ins. Co.*, 81 Mo. App. 291 (1899).

d See sec. 54

[2] See sec. 55.

such coverage is permitted), accidents generally, acts of God, and acts of man other than the owner and his agents. The horse and cattle policies do not insure against the slaughtering of the animals by orders of government because they have been exposed to or have contracted some contagious disease.

These policies contain also a number of stipulations which, if not performed, will render the policy void. Among these provisions is one requiring immediate notice in case the animal is killed or injured by a peril insured against.[1] Other clauses require the owner to employ a veterinarian to attend the animal if it is injured, and to permit the insurer to make a post-mortem examination in case of death. Where horses and cattle are insured, it is agreed that the policy will be void if the animal is operated on without the insurer's consent, unless an operation is necessary to relieve suffering or save life. The owner is prohibited from using horses for playing polo, racing on ice, hunting, jumping, steeple chasing, and so forth.

Other stipulations similar to or identical with those in the transportation policy complete the contract.[2]

CONCLUSION

An attempt has been made in the foregoing pages to give a brief description of the principal inland marine insurance contracts, with special attention to the interpretation of the policy clauses. Any such description is bound to be incomplete, because of the great variety of clauses used by the insurers writing this kind of insurance, and for the further reason that the forms in use are subject to constant change. Considering the rapid growth of the business and the wide variety of

[1] See sec. 47 for discussion of "immediate notice."

[2] See Chap. III.

subject matter covered, this somewhat chaotic condition is bound to exist, at least for a time.

However, some steps have been taken to remedy the situation, notably by the Inland Marine Underwriters Association. This organization, which at present includes in its membership many well-known insurance companies, has by agreement of its members prescribed the forms to be used by them, the rates to be charged, and the rules to govern in writing certain kinds of inland marine insurance. The forms not prescribed by the I.M.U.A. and the policies issued by insurers who do not belong to this organization leave ample room for the free growth and development of policy forms. Despite the freedom thus permitted to insurers, there is a remarkable similarity between the basic forms in use, due perhaps to the fact that when one insurer constructs a good form it is frequently adopted by others. The tendency, therefore, is towards uniformity and standardization.

Such uniformity has advantages to both insurer and insured. Perhaps the principal advantage is that it tends towards certainty, and hence to a decrease in litigation and disputes. As the meaning of the clauses is settled by legal interpretation and by custom, the parties come to know their rights. The insurer learns the extent of its risk, and the assured learns the extent of the protection which he has bought.

Another notable tendency is that towards making a separate and distinct contract form for each kind of business which it is sought to insure. Insurers have devised the jeweler's block policy for the jewelry trade, the laundry policy for laundrymen, the garment floater for manufacturers of clothes, and so on. Unfortunately, this tendency is not manifest in all branches of the business, a fact especially noticeable in insurance against

legal liability. While there is a more or less definite form for insuring the motor truckman's liability, this form is not universally used and is a long way from being "standard." The other liability policies are even less generally uniform. Too often the inland marine liability policy is a typewritten contract attached to some basic form having no relation to legal liability. This practice leads to difficulties in interpretation and often to expensive litigation.

Although inland marine insurance has been beset by many difficulties, inland marine insurers have gone steadily onward increasing their business and developing new policy forms to meet new needs. Difficulties are gradually being overcome, and inland marine insurance is taking its place as one of the principal branches of the insurance business.

APPENDIX A

ARTICLES OF AGREEMENT AMONG FIRE, MARINE AND CASUALTY INSURERS

Whereas, the National Convention of Insurance Commissioners of the United States in session at Chicago, Illinois, on the 2nd day of June, 1933, unanimously adopted the following resolution:

"**Whereas,** the National Convention of Insurance Commissioners of the United States, did, in December, 1922, approve a definition of Marine Underwriting Powers; and

Whereas, in the intervening years questions of interpretation and application of said definition have arisen and produced certain controversies among the Fire, Marine and Casualty Underwriters as to Writing Powers, which have been matters of concern in this Convention; and

Whereas, Marine and Transportation Insurance renders important services to and partakes closely of foreign and domestic commerce, and its subject matters are not confined to any one state or territory but are of mobile nature, and therefore a nation-wide definition and interpretation of Underwriting Powers is important; and

Whereas, at the meeting of this Convention, held in New York in December, 1932, a committee was appointed to consider the definition and interpretation of Marine Underwriting Powers and the desirability of nation-wide action in respect thereto; and

Whereas, with the cooperation of said Committee, an agreement as to Marine and Transportation Writing Powers has been arrived at among the Fire, Marine and Casualty Insurers, pursuant to which there has been prepared and submitted to said Committee a proposed nation-wide definition and interpretation of Marine and Transportation Underwriting Powers; and

Whereas, a proposed agreement for carrying out said definition and interpretation, has been agreed upon and it is about to be entered into among Fire, Marine and Casualty Insurers throughout the United States; and

Whereas, said Special Committee of this Convention with the approval of the Fire Insurance Committee now reports recommending the approval and adoption by this Convention of said proposed definition and interpretation for general acceptance in the United States, and the approval in principle of said proposed Agreement among Insurers; BE IT THEREFORE

Resolved, That the National Convention accept and approve of this report of the Special Commitece; and be it further

Resolved, That this Convention accept and promulgate the nation-wide definition and interpretation recommended by its Committee; and be it further

Resolved, That this Convention approve in principle the aforesaid Agreement among Fire, Marine and Casualty Insurers; and be it further

Resolved, That the National Convention hereby creates a standing committee of this Convention, to be known as "The Committee for the Definition and Interpretation of Underwriting Powers" to consist of three members to be designated by the President of this National Convention for the purpose of considering such questions of the interpretation, definition and application of underwriting powers as may be referred to it by companies, associations or members of this Convention interested in or affected by the plan herein approved.

Now, therefore, in consideration of the premises and of the mutual promises and undertakings of the parties hereto, the undersigned insurance corporations undertake and agree with each of the other subscribers hereto and do hereby make the following Agreement:

Article I. Nation-wide Definition of Marine Underwriting Powers

Section 1. For the purpose of securing nation-wide definition and interpretation of the underwriting powers of Marine and Transportation Insurers, each of the companies subscribing to this Agreement stipulates and agrees to recognize, accept and be bound by the terms and provisions of the annexed nation-wide definition and interpretation, marked *Annex "X,"* hereto attached and made part of this Agreement.

Section 2. Each of the companies subscribing to this Agreement further stipulates and agrees that the Joint Committee on Interpretation and Complaint (hereinafter created under this Agreement) shall accept as an aid in the construction and interpretation of Sections A and B of the aforesaid nation-wide definition the "Interpretive Note" hereto attached, marked *Annex "Y"* and made a part of this Agreement.

Article II. Subscribers to the Agreement

Section 1. This Agreement is made among individual companies and not among associations of companies.

Section 2. All insurance companies transacting a Fire, Marine or Casualty insurance business in the United States may (upon acceptance by the Committee, hereinafter created) become subscribers to this Agreement and subject to its terms, obligations and privileges.

Section 3. Subscription of a company to this Agreement shall also obligate all affiliated companies and all independent companies under the general control or management of the subscribing company and its

affiliated companies and all independent companies under the general control or management of the subscribing company and its affiliations, including Underwriters' Departments, within the territory described herein.

SECTION 4. Each General Agent and/or Manager of companies subscribing to this Agreement shall be bound to adhere to the provisions of this Agreement in respect to business written by him on behalf of companies not subscribers hereto.

ARTICLE III. JURISDICTION

The geographical scope of the Agreement and the jurisdiction of the Joint Committee on Interpretation and Complaint shall be continental United States, the District of Columbia and the Territories of Alaska and Hawaii, excepting only where the same is unlawful.

ARTICLE IV. PURPOSES

SECTION 1. The purposes of the Agreement, among others, are:

(*a*) To agree upon and secure uniformity in the definition and interpretation of the underwriting powers of Marine Insurers in cooperation with the National Convention of Insurance Commissioners of the United States and the Commissioners and Superintendents of the several States, Territories and the District of Columbia.*

(*b*) To promote good underwriting practices.

(*c*) To serve as a medium for the acquisition and exchange of information and to secure a uniform statutory definition of Marine and Transportation Insurance in accord with the annexed Nation-wide Definition and Interpretation.

SECTION 2. Every provision of this Agreement or any action pursuant thereto shall be binding on each subscriber except in any state where the same is unlawful.

ARTICLE V. OFFICERS

SECTION 1. There shall be a Chairman and one Vice-Chairman of the Joint Committee on Interpretation and Complaint, each of whom shall be appointed by and from among the members of that Committee to serve for a period of one year or until their successor or successors are similarly appointed, each of whom shall be entitled to one vote.

SECTION 2. There shall be a salaried Executive Secretary and a Treasurer, who shall be chosen by the Joint Committee on Interpretation and Complaint and whose salaries and terms of services shall be deter-

* It is not the purpose of the Agreement nor shall the Joint Committee on Interpretation and Complaint possess any power over rates or commissions of agents, brokers, or others, or the adjustment of losses, but shall be limited to matters directly related to the definition and interpretation of underwriting powers.

mined by said Committee. The positions of Executive Secretary and Treasurer may, in the discretion of the aforesaid Committee, be held by the same person.

ARTICLE VI. JOINT COMMITTEE ON INTERPRETATION AND COMPLAINT

SECTION 1. There shall be a Joint Committee on Interpretation and Complaint to consist of twelve (12) persons, five (5) of whom shall be appointed by the American Institute of Marine Underwriters, five (5) by the Interstate Underwriters Board, and two (2) by the National Bureau of Casualty and Surety Underwriters. Vacancies, if any, occurring among the appointees shall be filled for their respective unexpired terms by the organizations which made the original appointments.

SECTION 2. All the members of said Committee shall be senior executives of insurance companies or senior officers of insurance company organizations or senior executives of managerial insurance agencies.

SECTION 3. The members of said Committee shall be appointed for a period of one year, but shall continue as members of said Committee until their successors are appointed; *provided, however*, that the first appointees to membership in said Committee shall continue as such from the date of their appointment until 31 December, 1934, and thereafter, until their successors are appointed.

SECTION 4. The members of said Committee may be represented at meetings by substitutes, but such substitutes shall have no power to vote unless such substitute would have been eligible for membership in said Committee.

SECTION 5. Seven members of said Committee shall constitute a quorum and the concurrence of seven members of the Committee shall be necessary for any action binding upon the Companies subscribing to this Agreement.

SECTION 6. Said Committee shall have power to:

(*a*) Elect from among their own number a Chairman and one Vice-Chairman;

(*b*) Appoint, as provided in Article V of this Agreement, an Executive Secretary and Treasurer for such periods and at such salaries as to the Committee may seem proper;

(*c*) Execute the functions and carry out the purposes of this Agreement; construe, adjudicate and enforce said Agreement and the attached Nation-wide Definition and Interpretation; provide procedure therefor, including the hearing and adjudication of interpretations, complaints and charges with respect thereto; initiate investigations, including examination of all records, company or otherwise, and (when contrary to this Agreement and/or the attached Definition) impose fines and penalties for infractions thereof; all subject to the provisions and limitations and rights of appeal hereinafter provided;

(*d*) Hold such hearings at such times and places, and on such notice as said Committee may determine;

(*e*) Employ such examiners, investigators and others in connection with requests for interpretation, complaints, charges and generally for the purpose of making effective its various interpretations, decisions and rulings, as said Committee may, from time to time, by resolution, determine;

(*f*) Employ counsel and incur such other legal expenses as to said Committee may seem necessary;

(*g*) Incur such other expenses as to said Committee may seem necessary.

SECTION 7. In the case of a complaint being made against any subscriber or employee of any subscriber, if such subscriber or the complainant shall happen at the time of such complaint to be a member of the Joint Committee, such member shall not serve on said Committee while the case is being adjudicated. If any member of the Committee is thus disqualified to serve, a substitute member may be appointed by the remaining members of his class (*i.e.*, fire, marine or casualty) to serve as a member of the Committee for the consideration of such case only.

SECTION 8. Any Subscriber to this Agreement desiring to file complaint without disclosure of identity to the Joint Committee may present the same to the Executive Secretary of the Joint Committee to be held by him confidential as to source.

SECTION 9. Said Committee shall promptly, after the rendition by it of any decision, interpretation and/or adjudication as in this Agreement provided, file a copy thereof in each instance with "The Committee for the Definition and Interpretation of Underwriting Powers" of the National Convention of Insurance Commissioners of the United States.

ARTICLE VII. DUES AND ASSESSMENTS

Each company subscribing to this Agreement shall pay such assessments as the aforesaid Joint Committee on Interpretation and Complaint may, from time to time, determine as necessary for the proper conduct, functions and operations of this Agreement and for the work of said Committee. Such assessments shall be levied and collected on a *pro rata* basis upon the total net amount of (a) ocean and inland marine insurance premiums, (b) burglary and theft insurance premiums, and (c) twelve and one-half per centum (12½%) of fire insurance premiums all as reported in the last annual statements of the subscribing companies.

ARTICLE VIII. PENALTIES

SECTION 1. It is a purpose and intent of this Agreement to establish the principle that no insurer which violates the aforesaid Nation-wide

Definition and Interpretation and/or this Agreement nor any of its agents shall profit or be advantaged thereby.

SECTION 2. In the event that any insurer is adjudged by the aforesaid Joint Committee on Interpretation and Complaint to have violated the annexed Nation-wide Definition and Interpretation and/or this Agreement (unless the decision of said Committee be reversed or modified as provided in Article IX of this Agreement), said Committee is hereby empowered to impose a fine not to exceed One Thousand Dollars ($1,000.00) for each such violation, and such fine shall be paid to the Treasurer under this Agreement within twenty (20) days of its imposition, (unless an appeal, as hereinafter provided, be taken within such period) to be applied to the expenses of the operation and function of this Agreement.

SECTION 3. Any offender, its affiliates and/or agents, may be ordered and required by the decision of said Committee to cancel any policy of insurance or reinsurance, or any certificate, binder, covering note, memorandum, cablegram, letter or other instrument by whatever name called whereby insurance is made or renewed, which may be so adjudged to be in violation of this Agreement and/or of the aforesaid Nation-wide Definition and Interpretation, and to remain off such risk or risks as may be involved for such period of time from the effective date of the aforesaid adjudged cancellation, as the committee may determine, and/or to reinsure said risk as the Committee may direct. The fact and *bona fides* of such cancellations and/or reinsurance shall be established to the satisfaction of said Committee.

SECTION 4. Each subscriber agrees to submit to, carry out and abide by the determinations and orders of said Committee and to pay any fine imposed upon it by said Committee, in accordance with the terms and provisions of this Agreement.

ARTICLE IX. APPEALS

SECTION 1. Any insurer, claiming to be aggrieved, may within twenty (20) days of the date of an interpretation or ruling of the Joint Committee on Interpretation and Complaint appeal therefrom as hereinafter provided.

SECTION 2. Such appeal shall lie to "The Committee for the Definition and Interpretation of Underwriting Powers" of the National Convention of Insurance Commissioners of the United States. Such notice of appeal, together with a statement of the grounds thereof, shall be filed in writing with the Chairman of the aforesaid Committee of the Convention, and a copy shall at the same time be delivered to the Executive Secretary of the Joint Committee on Interpretation and Complaint under this Agreement. Upon the hearing of such appeal, the appellant and the representatives of said Joint Committee, designated by it, may appear and be heard before said Committee of the Convention.

SECTION 3. The Joint Committee shall, upon the filing of a notice of appeal with the Executive Secretary of said Committee, promptly prepare and certify to "The Committee for the Definition and Interpretation of Underwriting Powers" of the National Convention of Insurance Commissioners a statement and findings of fact, decision, interpretation and/or ruling thereon.

ARTICLE X. EFFECTIVE DATE AND WITHDRAWAL

This Agreement shall become operative, effective and binding upon the subscribers, where and with such exceptions, and as and from such date as shall be named by the Joint Committee, by two-thirds vote of all the members of said Committee, but such date shall not be prior to 1 October, 1933.

Any subscriber may terminate his subscription to this Agreement as of the last day of any calendar year after the year 1933, by giving written notice to the Executive Secretary, not less than ninety (90) days preceding such 31 December. Such subscriber shall, however, be liable for its *pro rata* share of expenses for the period between the last assessment date and the effective date of resignation.

The cancellation or modification of contracts by which insurance is effected, which are not in conformity with the annexed Definition and Interpretation and are outstanding on the date on which this Agreement becomes effective, shall be dealt with as the aforesaid Joint Committee shall direct.

ARTICLE XI. COUNTERPARTS OF AGREEMENT

This Agreement shall be printed and may be executed in as many counterparts as shall be convenient, and all such counterparts shall be taken and considered together as the agreement of the parties executing such several counterparts and as constituting one original instrument.

ARTICLE XII. AMENDMENTS

This Agreement may be amended by an affirmative vote of two-thirds (⅔) of the Subscribing Companies taken by mail, (each Subscribing Company to have one vote) provided that not less than twenty (20) days' written notice of the text of a proposed amendment, approved by three-fourths (¾) of the Members of the Joint Committee, at a Regular or Special Meeting, has been mailed to each Subscriber.

IN WITNESS WHEREOF the Subscribers hereto have caused these presents to be duly executed by their officers or agents hereunto duly authorized as of the first day of October, nineteen hundred and thirty-three.

ANNEX X. NATIONAL CONVENTION OF INSURANCE COMMISSIONERS OF THE UNITED STATES

Nation-wide Definition and Interpretation of the Insuring Powers of Marine and Transportation Underwriters

Chicago, 2 June, 1933

The following Definition and Interpretation do not include or attempt to define all of the powers which may be exercised by insurers authorized by various State Insurance Laws to transact Marine, Inland Marine or Transportation Insurance in such States. The purpose and scope of this nation-wide definition and interpretation are to clarify, in respect to the kinds of insurance hereinafter mentioned, the meaning and application of State Insurance Laws with particular respect to questions of overlapping powers of various kinds of insurers and also of certain insurance coverages as to which there has been misapprehension or dispute among the Fire, Marine and Casualty Insurers. The following Nation-wide Definition and Interpretation have been adopted and promulgated by the National Convention of Insurance Commissioners of the United States to remove doubts as to the kinds of risks and coverages hereinafter mentioned and to determine what kinds of insurance coverages may and may not be written in the United States. Uniformity of understanding and practice as to insuring powers, frequently closely related to domestic and foreign commerce, both justify and require, in the judgment of the Convention, uniform and nation-wide definition.

I. Marine and/or transportation policies may cover under the following conditions:

A. Imports

1. Imports on consignment may be covered wherever the property may be and without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

   A shipment "on consignment" shall mean property consigned and intrusted to a factor or agent to be held in his care, or under his control for sale for account of another or for exhibit or trial or approval or auction, and if not disposed of, to be returned.

2. Imports not on consignment in such places of storage as are usually employed by importers, provided the coverage of the issuing companies includes hazards of transportation.

   Such policies may also include the same coverage in respect to property purchased on C. I. F. terms or "spot" purchases for inclusion with or in substitution for bona fide importations.

   An import, as a proper subject of marine or transportation insurance, shall be deemed to maintain its character as such so long as the property remains segregated in the original form or package in such a way that it can be identified and has not become

incorporated and mixed with the general mass of property in the United States, and shall be deemed to have been completed when such property has been:

(*a*) Sold and delivered by the importer, factor or consignee; or

(*b*) Removed from place of storage as described in paragraph "2" above and placed on sale as part of importer's stock in trade at a point of sale-distribution; or

(*c*) Delivered for manufacture, processing or change in form to premises of the importer or of another used for any of such purposes.

B. Exports

1. Exports may be covered wherever the property may be without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

An export, as a proper subject of marine or transportation insurance, shall be deemed to acquire its character as such when designated or while being prepared for export and retain that character unless diverted for domestic trade, and when so diverted, the provisions of this Ruling respecting domestic shipments shall apply, provided, however, that this provision shall not apply to long established methods of insuring certain commodities, *e.g.*, cotton.

C. Domestic Shipments

1. Domestic shipments on consignment, provided the coverage of the issuing companies includes hazards of transportation.

(*a*) Property shipped on consignment for sale or distribution, while in transit and not exceeding thirty (30) days after arrival at consignee's premises or other place of storage or deposit; and

(*b*) Property shipped on consignment for exhibit, or trial, or approval, or auction, while in transit, while in the custody of others and while being returned.

2. Domestic shipments not on consignment, provided the coverage of the issuing companies includes hazards of transportation, beginning and ending within the United States, provided that such shipments shall not be covered at points of sale-distribution or manufacturing premises nor after arrival at such points or at premises owned, leased or controlled by assured or purchaser, nor for more than thirty (30) days at other place of storage or deposit, except in premises of transportation companies or freight forwarders, when such storage is incident to transportation.

D. Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion are the only hazards to be covered. Piers, wharves, docks

and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion. Other aids to navigation and transportation, including dry docks and marine railways, against all risks.

E. **Personal Property Floater Risks**

1. Covering Individuals.
   (*a*) Tourist and/or Personal Effects Floater Policies, which policies shall exclude hazards while in a permanent residence of the assured.
   (*b*) Personal Fur Floater.
   (*c*) Personal Jewelry Floaters.
2. Covering Individuals and/or Generally.
   (*a*) Fine Arts Floaters. To cover objects of art such as pictures, statuary, bronzes and antiques, rare manuscripts and books, articles of virtu, etc., but excluding stained glass windows and carved glass used for commercial purposes.
   (*b*) Musical Instrument Floaters, excluding household instruments not customarily moved from the assured's premises.
   (*c*) Radium Floaters.
   (*d*) Physicians' and Surgeons' Instrument Floaters. Such policies shall not cover instruments and professional equipment not commonly carried with the assured, nor furniture and/or fixtures.
   (*e*) Pattern Floaters, excluding coverage on the assured's premises.
   (*f*) Theatrical Floaters, excluding buildings and their improvements and betterments and furniture and fixtures that do not travel about with theatrical troupes.
   (*g*) Film Floaters, including builders' risk during the production and coverage on completed negatives and positives and sound records.
   (*h*) Salesmen's Samples Floaters, excluding coverage on the assured's premises.
   (*i*) Wedding Present Floaters for not exceeding ninety (90) days after the date of the wedding.
   (*j*) Jewelers' Block Policies, excluding improvements and betterments of buildings, furniture, fixtures, tools and machinery of the assured.
   (*k*) Exhibition Policies on property while on exhibition and in transit to and/or from such exhibitions.
   (*l*) Horses and Wagon Policies covering wherever horses or other animals, wagons and equipment may be.
   (*m*) Installation Risks covering loss to seller on account of physical damage to the property. Such policies shall cover articles of machinery or equipment only during the period of installation and testing.

(*n*) Movable Equipment Floaters, *e. g.*, contractors' equipment, mechanical sales devices, storage batteries; stevedores', divers' and undertakers' equipment and other property of a mobile or floating nature, not on sale or consignment, or in the course of manufacture, which has come into the custody and/or control of parties who intend to use such property for the purpose for which it was manufactured or created.

Such policies shall not include coverage of storage risks at premises controlled or leased by the assured, except where purely incidental to the regular or frequent use of the equipment or property.

(*o*) Miscellaneous Movable Articles Floaters, *e. g.*, outboard motors, parachutes and balloons, scientific and surveyors' instruments, harvesters; articles for sport and recreation, musical scores and orchestrations and other similar property of a mobile or floating nature, not on sale or consignment, or in the course of manufacture, which has come into the custody and/or control of parties who intend to use such property for the purpose for which it was manufactured or created, such policies to contain an itemized list of articles insured, with description and amount or value of each.

(*p*) Property in transit to and/or from and while waiting for or undergoing processing in bleacheries or fumigatories or on premises of dyesters, throwsters and other similar processors until delivered to storage warehouses or final place of delivery contemplated at the time the shipment was made.

Provided, however, that such policies shall not cover bailee's property at his premises.

(*q*) Installment Sales and Leased Property. Policies covering property sold under conditional contract of sale, partial payment contract, installment sales contract, or leased. Such policies must cover in transit but shall not extend beyond the termination of the seller's or lessor's interest.

Provided, however, that property not mobile in character, under lease or leased on a royalty basis, may not be so insured although title remains in the lessor.

(*r*) Bailee's Customer's Policies covering personal property of customers. Such policies shall cover in transit and during process at *e. g.*, laundrymen's, dyers' and cleaners' premises, provided, however, that such policies shall not cover bailee's property at his premises.

(*s*) Furriers and/or Fur Storer's Customer's Policies (*i. e.*, policies under which certificates and/or receipts are issued by furriers and/or fur storers) covering specified garments the property of

customers, but only while in the custody of the furrier and/or fur storer.

(*t*) Silverware floaters, excluding the permanent residence of the assured.

II. Marine and/or transportation policies shall not cover property, under the following conditions:

A. Storage of assured's merchandise, except as hereinbefore provided.

B. Merchandise in course of manufacture, the property of and on the premises of the manufacturer.

C. Furniture and fixtures in use, or improvements to buildings except as provided above.

D. Fire risk on all building materials while in course of erection after seller's interest ceases.

E. Fire or other risks on merchandise in permanent location, sold under partial payment, contract of sale, or installment sales contract, which involves protection of the purchaser's interest after seller's interest ceases.

F. Risks on monies and/or securities in safes, vaults, safety deposit vaults, bank or assured's premises, except while in course of transportation.

G. Any policy substantially the equivalent of "The Personal Property Floater," sometimes referred to as "The Householder's Comprehensive."

H. Risks of fire, tornado, sprinkler leakage, earthquake, hail, explosion, riot, and/or civil commotion on buildings, structures, wharves, piers, docks, bulkheads and sheds and other fixed real property on land and/or over water, except as provided in Section I. D.

ANNEX Y. INTERPRETIVE NOTE AGREED TO BY FIRE, MARINE AND CASUALTY INSURERS

as an aid to the Joint Committee on Interpretation and Complaint in their construction of the Nation-wide Definition and Interpretation of the National Convention of Insurance Commissioners of the United States.

1. In the interpretation of the provisions of SECTIONS A and B of the Definition and Interpretation as applied to any particular business or policy, due weight shall be given to the spirit of the said Definition, which is, that in order to make the storage risk on the property insured a proper subject for coverage under a marine policy, the storage risk must be incidental to the transportation risk. Where the transportation risk is incidental to the storage risk, then it is not a proper subject for coverage under a marine contract.

Among the tests by which the foregoing may be judged are:

(*a*) Where the premium charged on an entire policy is less or only equal to what would have been received on the storage portion at the filed rates for fire insurance. This fact shall be considered as *prima facie* evidence that the transportation risk is incidental to the storage risk and that the policy does not come within the spirit of the Definition, unless this factor is outweighed by other considerations.

(*b*) Where the rate of premium charged under the policy for the storage portion of the risk is less or only equal to what would have been charged under the rates promulgated by recognized fire rating organizations, this fact shall be considered as *prima facie* evidence that the policy does not come within the spirit of the Definition, unless this fact is outweighed by other considerations.

2. In the consideration of specific cases, due weight should be given to all surrounding circumstances, including, among others, the elements of premium, rate and time in storage.

APPENDIX B

TRANSPORTATION POLICY—TYPICAL FORM

BLANK INSURANCE COMPANY

No.....

TRANSPORTATION POLICY

Amount $ ..... Rate ..... Premium $ . .

In Consideration of the Stipulations Herein Named
and of .... Dollars, Premium,
does insure.. ....
for the term of .... .. from the . . .day of . . 19 ,
at noon, Standard Time at place of issuance, to the . .day of . .19 ,
at noon, Standard Time at place of issuance.
On goods and merchandise, including packages, consisting of .
their own or held by them in trust, or on commission, or on consignment, or on which they have made advances, or sold but not delivered.
Loss, if any, payable to assured or order.
The said goods and merchandise shall be valued at... ...
....
but this Company shall not be liable for more than Dollars
in any one casualty either in case of partial or total loss, or salvage charges, or any other charges, or expenses, or all combined.
In transit at and from. ....
....

THIS POLICY SHALL NOT BE VALID UNLESS ENDORSEMENT A, B or C IS ATTACHED HERETO, AND IS MADE AND ACCEPTED SUBJECT TO THE FOREGOING STIPULATIONS AND CONDITIONS AND TO THE CONDITIONS PRINTED ON THE BACK HEREOF, **WHICH ARE HEREBY SPECIALLY REFERRED TO AND MADE A PART OF THIS POLICY,** together with such other provisions, agreements or conditions as may be endorsed hereon or added hereto; and no officer, agent or other representative of this Company shall have power to waive or be deemed to have waived any provision or condition of this Policy unless such waiver, if any, shall be written hereon or attached hereto, nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the Assured unless so written or attached.

In Witness Whereof, this Company has executed and attested these presents, but this Policy shall not be valid unless countersigned by a duly authorized Agent of the Company.

....

Secretary *President*

Countersigned at . . .. , *this*..... . *day of* ...., 19..

....*Agent*

CONDITIONS

1. Territorial Limits. --This policy covers only within the limits of the United States and Canada.

2. Other Insurance.—It is expressly agreed that this insurance shall not cover to the extent of any other insurance whether prior or subsequent hereto in date, and by whomsoever effected, directly or indirectly covering the same property, and this Company shall be liable for loss or damage only for the excess value beyond the amount of such other insurance.

3. Misrepresentation and Fraud.—This entire policy shall be void if the Assured or his Agent has concealed or misrepresented in writing, or otherwise, any material facts or circumstances concerning this insurance or the subject thereof, or if the Assured or his Agent shall make any attempt to defraud this Company either before or after a loss.

4. Machinery.—In case of loss or injury to any part of a machine consisting when complete for sale or use of several parts, the Insurers shall only be liable for the insured value of the part lost or damaged.

5. Labels. In case of loss affecting labels, capsules or wrappers, the loss shall be adjusted on the basis of an amount sufficient to pay the cost of new labels, capsules or wrappers, and reconditioning the goods.

6. Benefit of Insurance.—Warranted by the Assured that this insurance shall not inure directly or indirectly to the benefit of any carrier, bailee or other party, by stipulation in bill of lading or otherwise, and any breach of this warranty shall render this policy of insurance null and void.

7. Notice of Loss.—Every claim for a loss under this policy shall be immediately reported in writing with full particulars to ———— - - - INSURANCE COMPANY, or to the Agent of the Company issuing this policy, and a detailed sworn proof of loss shall be filed with the Company or its said Agent within four months of the date of the loss. A failure by the Assured to file either such claim or such proof shall invalidate the claim. All adjusted claims shall be due and payable thirty days after the presentation and acceptance of proofs of loss at the office of this Company.

8. Sue and Labor.—In case of loss or damage it shall be lawful and necessary for the Assured, their factors, servants or assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of

the property insured hereunder, or any part thereof without prejudice to this insurance; nor shall the acts of the Assured or this Company in recovering, saving and preserving the property insured in case of loss or damage, be considered a waiver or acceptance of an abandonment; to the charges whereof, this Company will contribute according to the rate and quantity of the sum herein insured.

9. Insurer's Right to Institute Legal Proceedings in Name of Assured.—It is expressely agreed that upon payment of any loss or advancement or loan of moneys concerning the same, that the Assured will at the request and expense of the Company, and through such counsel as the Company may designate, make claim upon and institute legal proceedings against any carrier, bailee, or other parties believed to be liable for such loss, and will use all proper and reasonable means to recover the same.

10. Impairment of Carriers' Liability.—Any act or agreement by the Assured, prior or subsequent hereto, whereby any right of the Assured to recover the full value of, or amount of damage to, any property lost or injured and insured hereunder, against any carrier, bailee or other party liable therefor, is released, impaired or lost, shall render this policy null and void, but the Insurer's right to retain or recover the premium shall not be affected. This Company is not liable for any loss or damage which, without its consent, has been settled or compromised by the Assured.

11. Suit against Company.—No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the requirements of this policy, nor unless commenced within twelve months next after the happening of the loss, provided that where such limitation of time is prohibited by the laws of the state wherein this policy is issued, then, and in that event, no suit or action under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such state.

12. Reinstatement.—Every claim paid hereunder reduces the amount of insurance by the sum so paid, but it is a condition of this policy that in the event of loss, the Assured agrees to pay the Insurer additional premium or premiums at pro rata rates, on the amount of such loss and to reinstate the full amount of this policy, such reinstatement to take effect immediately upon the occurrence which occasioned the loss, and the charges therefor to be made from such date.

13. Assignment.—This policy shall be void if assigned or transferred without the written consent of this Company.

14. Cancellation by Non-payment of Premium.—It is a condition of this policy that if the premium be not paid within sixty days from the date of attaching this policy shall be null and void during the time the premium is past due and unpaid.

15. Cancellation.—This policy shall be cancelled at any time at the request of the Assured; or by the Company by giving fifteen days' notice of cancellation. If this policy shall be cancelled as hereinbefore provided, or become void or cease, the premium having actually been paid, the unearned portion shall be returned on surrender of this policy, this Company retaining the customary short rate; except that when this policy is cancelled by this Company by giving notice it shall retain only the pro rata premium. Notice of cancellation mailed to the last known address of the Assured shall be a sufficient notice; the check of this Company, or its Agents, when similarly mailed, shall be a sufficient tender of any unearned premium.

16. Agent of Assured.—If any party or parties other than the Assured have procured this policy or any renewal thereof, or any endorsement thereon, they shall be deemed to be the Agents of the Assured and not of this Company in any and all transactions and representations relating to this insurance.

APPENDIX B1

BROAD FORM OF ENDORSEMENT FOR TRANSPORTATION POLICY

Assured.....

This insurance covers only while the property insured is in the custody of:

(*a*) Any railroad or railroad express company (including the risk on ferries and/or in cars on transfers or lighters);

(*b*) The regular coastwise lines of steamers navigating United States Inland, Atlantic and Gulf waters not south of Gulf of Mexico (including risk of craft to and from the vessel, each craft or lighter to be considered as if separately insured); it being expressly understood, however, that this policy excludes and does not cover shipments by vessels navigating any canal, the Great Lakes, the Mississippi and Ohio Rivers, and their tributaries, or shipments by steamers navigating the Pacific Coast;

(*c*) Public truckmen, land transfer and/or land transportation companies, provided these carriers are used in connection with railroad, railroad express, and above-mentioned steamer shipments.

This policy also covers while on docks, wharves, piers, bulkheads, in depots, stations and/or on platforms, but only while in the custody of a common carrier incidental to transportation.

This insurance attaches from the time the goods leave factory, store, or warehouse at initial point of shipment, and covers thereafter continuously, in due course of transportation, until same are delivered at store or warehouse at destination.

THIS POLICY INSURES

WITHIN THE FOREGOING PROVISIONS, AND EXCEPT AS HEREINAFTER PROVIDED, PROPERTY

(*a*) While on land against loss or damage caused by fire, lightning, cyclone, tornado, flood; collision (the coming together of cars during coupling not to be deemed a collision), derailment and overturning of vehicle; and other perils of transportation;

THIS POLICY DOES NOT INSURE

(*a*) Accounts, bills, currency, deeds, evidences of debt, money, notes, securities;

(*b*) Against loss by leakage, breakage, marring or scratching, unless caused by fire, lightning, cyclone, tornado, flood, collision, derailment or overturning of vehicle while on land; or unless caused by the vessel, craft or lighter being

(*b*) While water-borne, against loss or damage caused by fire and perils of the sea, including general average and/or salvage charges and expenses, but free of particular average unless amounting to three per cent. (3%) of the value of each case or package;

(*c*) Against theft of an entire shipping package only, but does not include pilferage.

stranded, sunk, burned or in collision while water-borne;

(*c*) Against loss or damage to goods by delay, wet or dampness, or by being spotted, discolored, mouldy, rusted, frosted, rotted, soured, steamed or changed in flavor, unless the same is the direct result of a peril insured against;

(*d*) Against loss or damage caused by strikers, locked-out workmen, or persons taking part in labor disturbances, or arising from riot, civil commotion, capture, seizure or detention, or from any attempt thereat, or the consequences thereof, or the direct or remote consequences of any hostility, arising from the acts of any government, people or persons whatsoever (ordinary piracy excepted), whether on account of any illicit or prohibited trade, or any trade in articles contraband of war, or the violation of any port regulation or otherwise. Also free from loss or damage resulting from measures or operations incident to war, whether before or after the declaration thereof;

(*e*) Against loss or damage to merchandise shipped on deck of ocean-going steamers;

(*f*) Against loss or damage caused by the neglect of the Assured to use all reasonable means to save and preserve the property at and after any disaster insured against, or when the property is endangered by fire in neighboring premises;

(*g*) Shipments that have been either refused or are returned by the receiver thereof;

(*h*) Export or import shipments unless specifically stated herein;

(*i*) Risks by mail unless specifically stated herein.

CONDITIONS

Premium Readjustment and Report of Shipments.—The premium charged under this policy is based on an estimate of $.....worth of shipments made during the period insured, and the Assured warrants that at the end of.....will report to this Company the actual value of all shipments covered hereunder during the period for which such report is required, and upon the total of all reported shipments exceeding in the aggregate the said estimate of $..... ..., the Assured agrees to pay this Company additional premium at the rate of... per $100 of value in the excess of said estimate of $....., such additional premium to become due and payable to this Company immediately upon the furnishing of the aforesaid report or reports; but in the event of the actual shipments falling short of the said estimate of $..... , then this Company will return premium at the same rate on the deficiency, but no return premium shall become due or payable until the expiration of this policy; it being understood that by the acceptance of this readjustment clause, the reinstatement clause in the body of this policy is waived.

Cancellation.—This policy may be cancelled by either the Assured or this Insurance Company on giving fifteen days' notice in writing, and the Assured agrees to furnish this Insurance Company with an accurate statement showing the total value of all shipments covered by this policy between the date of its attachment up to and including the date of cancellation, and further agrees to pay premium on this amount at the rate stated in the above adjustment clause; if the premium thus determined exceeds the initial premium paid, the amount of such excess shall immediately become due and payable to this Insurance Company, and per contra, any unearned premium (being the amount by which the initial premium exceeds the premium due) shall be returned to the Assured.

Record of Shipment.—The Assured also agrees to keep a true record of all shipments insured hereunder, and agrees to keep such record open to the inspection of representatives of this Insurance Company at all times during business hours.

All other terms and conditions of the within described policy remaining unchanged.

Attached to and forming part of Policy No.. . . of the.. .. . .

. ..... INSURANCE COMPANY. .....

Date ....

APPENDIX B2

ALL RISKS FORM OF ENDORSEMENT FOR TRANSPORTATION POLICY

Attached to and forming part of Policy No .....

Assured .....

This Insurance covers only while the property insured is in the custody of:

(*a*) Any railroad or railroad express company (including the risk while on ferries and/or in cars on transfers or lighters).

(*b*) Public truckmen, land transfer and/or land transportation companies.

This policy also covers while on docks, wharves, piers, bulkheads, in depots, stations and/or on platforms, but only while in the custody of a common carrier incidental to transportation.

This insurance attaches from the time the goods leave the factory, store or warehouse at initial point of shipment, and covers thereafter continuously, in due course of transportation, until same are delivered at store or warehouse at destination.

THIS POLICY INSURES,

Subject to the foregoing provisions, against all risks of loss or damage from any external cause, with the following exceptions:

EXCEPTIONS,

Loss or damage caused by delay.

Loss or damage to accounts, bills, currency, deeds, evidences of debt, money, notes, securities.

Loss or damage caused by the neglect of the Assured to use all reasonable means to save and preserve the property at and after any disaster insured against, or when the property is endangered by fire in neighboring premises.

Loss or damage caused by strikers, locked-out workmen, or persons taking part in labor disturbances, or arising from riot, civil commotion, capture, seizure or detention, or from any attempt thereat, or the consequences thereof, or the direct or remote consequences of any hostility, arising from the acts of any government, people, or persons whatsoever (ordinary piracy excepted), whether on account of any illicit or prohibited trade, or any trade in articles contraband of war, or the violation of any

port regulation, or otherwise. Also free from loss or damage resulting from measures or operations incident to war, whether before or after the declaration thereof.

Loss or damage to shipments that have been either refused or are returned by the receiver thereof.

Loss or damage to export or import shipments, or to risks by mail.

CONDITIONS

Premium Readjustment and Report of Shipments.—The premium charged under this policy is based on an estimate of $ . . . . worth of shipments made during the period insured, and the Assured warrants that at the end of . . . . . will report to this Company the actual value of all shipments covered hereunder during the period for which such report is required, and upon the total of all reported shipments exceeding in the aggregate the said estimate of $. . . . . , the Assured agrees to pay this Company additional premium at the rate of per $100 of value in excess of said estimate of $ . . . . . , such additional premium to become due and payable to this Company immediately upon the furnishing of the aforesaid report or reports; but in the event of the actual shipments falling short of the said estimate of $ . . . . . , then this Company will return premium at the same rate on the deficiency, but no return premium shall become due or payable until the expiration of this policy; it being understood that by the acceptance of this readjustment clause, the reinstatement clause in the body of this policy is waived.

Cancellation.—This policy may be cancelled by either the Assured or this Insurance Company on giving fifteen days' notice in writing, and the Assured agrees to furnish this Insurance Company with an accurate statement showing the total value of all shipments covered by this policy between the date of its attachment up to and including the date of cancellation, and further agrees to pay premium on this amount at the rate stated in the above readjustment clause; if the premium thus determined exceeds the initial premium paid, the amount of such excess shall immediately become due and payable to this Insurance Company, and per contra, any unearned premium (being the amount by which the initial premium exceeds the premium due) shall be returned to the Assured.

Record of Shipment.—The Assured also agrees to keep a true record of all shipments insured hereunder, and agrees to keep such records open to the inspection of representatives of this Insurance Company at all times during business hours.

All other terms and conditions of the within-described policy remaining unchanged.

. . . . . .

APPENDIX C

JEWELER'S BLOCK POLICY—I.M.U.A. FORM

THE BLANK INSURANCE COMPANY

No... . . . . .

JEWELER'S BLOCK POLICY

Whereas..... . . . . .
of. ....
hereinafter called the Assured, have made to this company a written proposal and declaration dated the..... ..day of .. .. , which is attached hereto and made a part hereof, and which is hereby agreed to be the basis of this policy, and whereas, the assured hereby warrants the truth of each and every statement and particular contained therein.

In consideration of such written proposal and declaration and of the stipulations and conditions and premium hereinafter provided, **The Blank Insurance Company,** hereinafter called the Company, Does Insure the Assured named herein for the term herein stated, and to an Amount not exceeding the Amount of insurance herein specified against loss of or damage to the property herein specified, and upon the stipulations and conditions hereinafter contained:

The term of this policy begins at noon on the.....day of.....19 .,
and ends at noon on the..... ... ...day of.....19 ,
Standard Time at the place of issuance.
The Total Amount insured hereunder is.....Dollars($ ... .)
and the Premium therefor is .... Dollars($.. ....)

THE PROPERTY INSURED IS AS FOLLOWS:

(*a*) Pearls, precious and semi-precious stones, jewels, jewelry, watches and watch movements, gold, silver, platinum, other precious metals, and alloys and other stock usual to the conduct of the assured's business, owned by the assured;

(*b*) Property as above described, delivered or entrusted to the assured, belonging to others who are not dealers in such property or not otherwise engaged in the jewelry trade;

(*c*) Property as above described, delivered or entrusted to the assured by others who are dealers in such property or otherwise engaged in the jewelry trade, but only to the extent of the assured's own actual interest

therein, because of money actually advanced thereon, or legal liability for loss of or damage thereto.

The property above specified is covered while the same is in or upon any place or premises whatsoever in the United States of America, the Hawaiian Islands and Alaska (excluding the Philippines and/or any overseas possessions) and Canada, and also (subject to the limitations and exclusions hereinafter specified) while being carried or in transit by land or sea between any ports or places within the above limits and while being carried or in transit between such ports or places and ports or places in Europe (excluding Russia, Poland, Spain and Turkey).

THE MAXIMUM LIABILITY OF THIS COMPANY FOR ANY ONE LOSS IN RESPECT TO:

1. (Outside limit) Property in transit by express or first class registered mail (or air mail or air express, if endorsed hereon and not otherwise limited) or which is deposited in the vault of a bank or safe deposit company or which is in the possession of a customer or in the custody of a dealer in property described herein not employed by or associated with the assured, is limited to $ . . . . . .

. . . . . .

2. (Travel limit) Property elsewhere than at the premises of the assured (not included in clause one) is limited to $ . . . . .

. . . . . .

This Policy covers loss of and/or damage to the above described property or any part thereof arising from any cause whatsoever except as hereinafter mentioned, viz:

(*A*) Loss or damage or expenses by or resulting from theft, conversion or other act or omission of a dishonest character (including sabotage) on the part of the assured or his or their employees or any person to whom the property hereby insured may be delivered or entrusted by whomsoever for any purpose whatsoever unless such loss arises when goods are deposited for safe custody by the assured, member of the firm or salesman while traveling, or while the goods are in the custody of (*a*) the post office department as first class registered mail, or (*b*) a common carrier, or (*c*) a mere porter, helper or carrier not in the permanent employ of the assured.

(*B*) Damage sustained while the property is being actually worked upon and directly resulting therefrom.

(*C*) Loss or damage (including loss or damage by fire or theft) directly or indirectly contributed to, by or resulting from war, invasions, hostilities, acts of foreign enemy, riots, strikes, civil commotions, rebellions, insurrections, military or usurped power or martial law, or the confiscation or destruction of property by order of any government or public authority.

(*D*) Loss or damage (including loss or damage by fire or theft) directly or indirectly contributed to, by or resulting from typhoon, hurricane, tornado, cyclone, volcanic eruption, earthquake, flood (meaning rising navigable waters) subterranean fire or other convulsion of nature:—This exception only applies to risks on land.

(*E*) Loss or damage occurring in course of transit by express (unless in sealed packages by railway express), by mail unless registered first class, by air mail or air express unless endorsed hereon, or by freight whether by land or water.

(*F*) Breakage of articles of a brittle nature unless such breakage is caused by burglars or thieves and/or fire, and/or owing to an accident to the vehicle or other conveyance in which the property insured is being carried.

(*G*) Loss or damage to goods sold on the installment plan from the time they leave the Assured's custody.

(*H*) Loss or damage while the property is being worn by the assured or by any officer, director, agent, employee, servant or messenger of the assured, or by any dealer or other person, firm or corporation engaged in the jewelry trade or by any of their officers, directors, agents, employees, servants or messengers or any of their customers or by any member of the family, relative or friend of any of the aforesaid, or while in their custody for such purpose.

(*I*) Loss of or damage to property insured hereunder whilst in or upon any automobile, motorcycle or any other vehicle unless, at the time the loss occurs, there is actually in or upon such vehicle, the Assured or a permanent employee of the Assured, or a person whose sole duty it is to attend the vehicle; this exclusion shall not apply to property in the custody of a common carrier covered hereunder, or in the custody of the Post Office department as first class registered mail.

(*J*) Loss or damage to the property hereby insured whilst at any Public Exhibition promoted or financially assisted by any Public Authority or by any Trade Association.

(*K*) No claim shall attach for any unexplained shortage. Neither shall any claim attach for any shortage in goods claimed to have been forwarded in a package when the package is received by the Consignee in apparent good order with seals unbroken; or for the loss of or damage to goods when sent by any Express Line "C. O. D." with the privilege of inspection by the Consignee before delivery to him.

(*L*) The Assured shall bear at his or their own risk twenty per cent (20%) of each and every claim payable under this policy for loss of property insured hereunder from his or their windows resulting from window smashing.

THIS POLICY IS MADE AND ACCEPTED SUBJECT TO THE FOREGOING STIPULATIONS AND CONDITIONS AND TO THE FOLLOWING STIPULATIONS AND CONDITIONS **PRINTED ON THE BACK HEREOF, which are hereby**

specially referred to and which shall be construed as conditions precedent to any recovery hereunder, together with such other provisions, agreements or conditions as may be endorsed hereon or added hereto; and no Officer, Department Manager or other representative of this Company shall have power to waive or be deemed to have waived any provision or condition of this Policy unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the Assured unless so written or attached.

....

Secretary *President*

Countersigned at ....*this* . *day of* . ., 19

....

CONDITIONS

1. The Company shall not be liable beyond the actual cash value of the property at the time of any loss or damage and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and shall in no event exceed the lowest figure put upon such property in the Assured's inventories, stock books, stock papers or lists existing at the time the loss occurred, nor the cost to repair or replace the same with material of like kind and quality. Any antiquarian or historical value attaching to the said property shall be excluded from the estimate of loss or damage.

2. Claims in respect of loss of or damage to pledged articles shall be limited to the amount actually loaned and unpaid plus the accrued interest at legal rate.

3. In case of loss of property of others (insured hereunder) held by the assured, for loss of which claim is made upon the Company, the right to adjust such loss with the owner or owners of the property is reserved to the Company and the receipt of such owner or owners in satisfaction thereof shall be in full satisfaction of any claim of the assured for the loss of said property for which such payment has been made. If legal proceedings be taken to enforce a claim against the assured as respects any such loss, the Company reserves the right at its option without expense to the assured, to conduct and control the defense on behalf of and in the name of the assured. The Company, however, shall not be liable for any amount in excess of the actual cost of the said property to the owner or owners thereof, but in no event is this Company liable for more than the total amount of insurance granted hereunder.

4. Warranted that the Assured keeps a detailed and itemized inventory of all property including traveling salesmen's stocks, in such manner that the exact amount of loss can be accurately determined therefrom by the Company.

5. This entire policy shall be void if the Assured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or in case of any fraud or false-swearing by the Assured touching any matter relating to this insurance or the subject thereof whether before or after the loss.

6. It is understood and agreed that any insurance granted herein shall not cover (excepting as to the legal liability of the Assured), when there is any other insurance which would attach if this policy had not been issued, whether such insurance be in the name of the Assured or of any third party. It is however, understood and agreed, that if under the terms of such other insurance (in the absence of this policy) the liability would be for a less amount than would have been recoverable under this policy (in the absence of such other policy) then this policy attaches on the difference. Warranted that this insurance shall not inure directly or indirectly to the benefit of any carrier or other bailee.

7. Warranted that the assured will maintain insofar as is within his or their control, during the life of this policy, watchman and the protective devices as described in his or their proposal form attached hereto.

8. In the event of loss or damage, or of anything likely to result in a claim under this policy, the Assured shall give immediate notice in writing to the Company, protect the property from further damage, furnish a complete list of the lost or damaged property stating the market value and cost of each article and the amount claimed thereon; and the Assured shall within sixty (60) days after a loss (unless such time is extended in writing by the Company), render to the Company a proof of loss signed and sworn to by the Assured, stating the knowledge and belief of the Assured as to the following: The time and cause of the loss or damage; the interest of the Assured and of all others in the property affected; the cash value of each item thereof, and the amount of loss of or damage thereto; all encumbrances thereon; all other contracts of insurance, whether valid or not, covering any of such property and shall furnish a copy of all the descriptions and schedules in all insurance policies if required.

9. The Assured as often as may be reasonably required shall submit, and so far as is within his or their power shall cause all other persons interested in the property and members of their households and employees to submit, to examinations under oath by any person named by the Company relative to any and all matters in connection with a claim, shall produce for examination all books of accounts, bills, invoices, and other vouchers or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its representatives, and shall permit extracts and copies thereof to be made. No such examination under oath or examination of books or documents, nor any other act of the Company or any of its employees or representatives in connection with the investigation of any loss or claim hereunder, shall be

deemed a waiver of any defense which the Company might otherwise have with respect to any such loss or claim, but all such examinations and acts shall be deemed to have been made or done without prejudice to the Company's liability.

10. There shall be no abandonment to the Company of any property, but the amount of loss or damage for which the Company may be liable, shall be payable sixty (60) days after satisfactory Proof of Loss, as herein provided, is received by the Company and ascertainment of the loss or damage is made by agreement between the Assured and the Company.

11. It is understood and agreed that if in case of loss the assured shall acquire any right of action against any individual, firm or corporation for loss of or damage to the property insured hereunder, the assured will, if requested by the Company, assign and transfer such claim to the Company under this Policy upon receiving payment for loss; and will subrogate the Company to all rights and demands of every kind, respecting the same, to the extent of the amount paid, and will permit suit to be brought in the assured's name but at the expense of said Company. In case of any loss or damage of any kind whatsoever, it shall be lawful and necessary, for the Assured or his or their factors, servants or assigns to sue, labor and travel for, in and about the defense, safeguard and recovery of the aforesaid subject matter of this insurance or any part thereof without prejudice to this insurance or waiver of the Assured's rights hereunder.

12. No suit or action on this policy for recovery of any claim shall be sustainable in any court of law or equity unless the Assured has fully complied with all the foregoing requirements nor unless commenced within twelve (12) months next after the date of the occurrence which gives rise to the loss, provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event, no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

13. It is agreed that the sum hereby insured shall be reduced by the amount of any loss covered by this policy; and that the maximum limits of liability provided, shall likewise be reduced by the amount of all losses subject to such maximum limits. Such reductions shall take effect as of the date of the occurrence from which the loss arises. The amount of loss, for the purpose of this clause, shall include any amount due to the Assured and any sums paid as rewards for the recovery of insured property, or otherwise. Unless otherwise provided by endorsement on this policy the Company and the Assured shall be deemed to have agreed that the full amount insured be reinstated automatically in the event of loss, and that a pro-rata additional premium is payable from the date of the occurrence which gives rise to the loss. Pending adjustment of any loss, payment of the premium for reinstatement of the

amount thereof may be deferred until the amount of the loss has been fixed and the precise amount of the reinstatement premium is known.

14. No assignment of Interest under this Policy nor change of business addresses as stated in the proposal attached hereto shall bind the Company unless the consent of the Company shall be endorsed hereon. No agreement, condition, or declaration of this policy shall be waived or changed, except by endorsement attached hereto, and countersigned by a duly authorized agent of the Company, nor shall this policy be valid unless so countersigned. No notice to, or knowledge possessed by, any agent or any other person shall be held to effect a waiver or change in any part of this policy unless endorsed hereon and signed as above provided.

15. Cancellation.—This policy shall be cancelled at any time at the request of the insured, in which case the Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by the Company by mailing to the insured at the address specified in this policy or at any later address known to the Company a five days' written notice of cancellation (such cancellation to be deemed accomplished upon the lapse of five days from date of mailing) with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

APPENDIX D

PERSONAL EFFECTS FLOATER COMMON FORM

BLANK INSURANCE COMPANY

PERSONAL EFFECTS FLOATER POLICY

World Wide No . . . . .

Amount $ . . Rate . . . . . Premium $ . . .

In consideration of the stipulations herein named and of . . . . . Dollars, Premium, does insure . . . . . hereinafter called the Assured Whose address is . . . . . from the . . . . . day of . . . . . 19 , at noon, to the . . . . . day of . . . 19 , at noon, Standard Time at place of issuance, to an amount not exceeding . . . . . Dollars,

ON PERSONAL EFFECTS such as are usually carried by tourists and travelers, belonging to and used or worn by the Assured and/or his wife and their unmarried children permanently residing together.

THIS POLICY DOES NOT COVER automobiles, motorcycles, bicycles, boats, motors, or other conveyances or their appurtenances, accounts, bills, currency, deeds, evidences of debt, letters of credit, passports, documents, money, notes, securities, railroad or other tickets, household furniture, animals, automobile robes or other automobile equipment, salesmen's samples, merchandise for sale or exhibition, theatrical property of any kind, nor any property specifically or otherwise insured.

THIS POLICY INSURES AGAINST:

ALL RISKS of loss of or damage to the insured property, except as hereinafter provided.

THIS POLICY DOES NOT INSURE:

While on the premises of the domicile of the Assured;

While in storage warehouses, except at points and places en route during travel and incidental thereto;

The property of students while in fraternity houses, dormitories and/or on the premises of schools or colleges;

Jewelry, watches and furs for more than Twenty-five Percent. (25%)

of the total amount of insurance for which this policy is written, nor for more than Five Hundred Dollars ($500) on any one such article;
Loss or damage caused by gradual deterioration, moth, vermin, inherent vice or damage sustained due to any process or while being actually worked upon and resulting therefrom;
Against breakage of articles of a brittle nature unless caused by thieves, fire or accident to conveyances;
Loss or damage arising from war, invasion, hostilities, rebellion, insurrection, confiscation by order of any Government, public authority, or risks of contraband or illegal transportation and/or trade.

CONDITIONS

EACH CLAIM FOR LOSS OR DAMAGE SHALL BE ADJUSTED SEPARATELY AND FROM THE AMOUNT OF EACH LOSS WHEN DETERMINED, THE AMOUNT OF TWENTY-FIVE DOLLARS ($25.00) SHALL BE DEDUCTED.

It is warranted by the Assured that this insurance shall in no wise inure directly or indirectly to the benefit of any carrier or other bailee.

The Assured shall immediately report to this Company or its Agent every loss or damage which may become a claim under this policy, and shall also file with the Company or its Agent, a detailed sworn proof of loss within ninety days from date of loss. Failure by the Assured either to report the said loss or damage or to file such written proofs of loss as above provided, shall invalidate any claim under this policy.

No loss shall be paid hereunder if the Assured has collected the same from others.

This Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost the Assured to repair or replace the same with material of like kind and quality.

All adjusted claims shall be paid or made good to the Assured within thirty days after presentation and acceptance of satisfactory proofs of interest and loss at the office of this Company.

Every claim paid hereunder reduces the amount insured by the sum so paid, unless the same be reinstated by payment of additional premium thereon.

In case of loss or damage, it shall be lawful and necessary for the Assured, their factors, servants and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the property insured hereunder, or any part thereof, without prejudice to this insurance; nor shall the acts of the Assured or this Company, in recovering, saving and preserving the property insured in case of loss or damage, be considered a waiver or an acceptance of abandonment; to the charges whereof, this

Company will contribute according to the rate and quantity of the sum herein insured.

It is a condition of this policy that no suit, action or proceeding for the recovery of any claim under this policy shall be maintainable in any court unless the same be commenced within twelve (12) months next after the calendar date of the happening of the physical loss or damage out of which the said claim arose. Provided, however, that if by the laws of the state within which this policy is issued such limitation is invalid, then any such claim shall be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted, by the laws of such state, to be fixed herein.

This policy may be cancelled at any time upon request of the Assured, the Company retaining or collecting the customary short rates for the time it has been in force; or, it may be cancelled by the Company by delivering or mailing to the Assured, at the address stated herein, five days' written notice of such cancellation and, if the premium has been paid, by tendering in cash, postal money order or check, the pro rata unearned premium thereon.

....

Secretary *President*

Countersigned at....., *this*.....*day of*....., 19..

.....*Agent.*

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